TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 870.

THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS AND MARTIN WOLF, INTERVENOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 26, 1884.

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a No. 7996. Supreme court of Louisiana. Filed 28th October, 1880.

(Signed) EMILE DUPRE,
D'y Clerk.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co., appellant,
vs.
CITY OF NEW ORLEANS, APPELLEE. } No. 10494.

Robert Mott & Thos. J. Semmes, attorneys for appellant.
E. Howard McCaleb, attorney for appellee.

TRANSCRIPT OF APPEAL RETURNABLE TO THE SUPREME COURT OF LOUISIANA ON THE FIRST MONDAY OF NOVEMBER, 1880.

1 STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

Petition.—Filed 5th February, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co.
vs.
CITY OF NEW ORLEANS & AL. } No. 10494.

To the honorable the fifth district court for the parish of Orleans:

The petition of the Crescent City Live-stock Landing and Slaughter-house Company, domiciliated in New Orleans, with respect, represents:

That petitioner was incorporated by an act of the legislature of the State of Louisiana, No. 118, approved 8th March, 1869, which is made part hereof, and was recognized as an existing corporation of said State.

That by its charter petitioner was required to build and maintain slaughter-houses, yards, pens, sheds, buildings, &c., and to have and maintain at least one slaughter-house of the capacity of slaughtering five hundred animals per diem; all of which abattoirs to be located below the United States barracks, on the east or left bank of the Mississippi River, and below the depot of New Orleans, Opelousas and Great Western Railroad, and now Morgan's Louisiana and Texas Railroad, on the west or right bank of said river; petitioner was also
2 required to sue for all violations of the provisions of the statute in which said charter was granted, and to cause to be enforced the prohibitory clauses thereof; in consideration of all which petitioner was granted the exclusive privilege of having and maintaining all slaughter-houses, yards, sheds and landings, for the yarding, sheltering, landing, and slaughtering of all animals intended for human food in the parishes of Orleans, Jefferson, and St. Bernard, and to charge certain fees, and to have certain privileges and perquisites for and from all animals slaughtered.

That in consequence of said charter and the contract with petitioner therein contained, the conditions therein imposed, and the privileges therein granted, petitioners purchased the necessary property, and erected the necessary buildings, yards, sheds, landings, &c., at an outlay of over five thousand dollars, and petitioners' capital stock became of great value; and various persons, citizens of the State of Louisiana and of other States of the Union and of foreign countries invested therein and became owners thereof.

That the said charter and the contract therein contained became a vested right in petitioner, that could not be divested by any subsequent legislation of the State of Louisiana.

3 That to interfere with the rights and privileges of petitioner would destroy the value of the stock, and render the same almost worthless.

That the State of Louisiana, by its legislation, had for many years been endeavoring to compel butchers to slaughter all animals intended for human food therein below the city, without success, and it was only after the State of Louisiana's aforesaid contract with petitioner that the same was effected, and the water of the river flowing past the pipes of the water-works of the city of New Orleans was freed from the filth and offal that had heretofore been carried in front of, and had sometimes been drawn into the water reservoirs for city use.

That the rights of petitioner under the said charter have been passed on and recognized and approved by the supreme court of the State of Louisiana, and by the Supreme Court of the United States; and by the provisions of the said act No. 118, approved 8th March, 1869, all persons or corporations were prohibited from landing, keeping, or slaughtering any cattle, sheep, swine, or other animals at any point on the west bank of the Mississippi River above the depot of Morgan's, Louisiana and Texas Railroad, or within the corporate limits of the city of New Orleans on the east bank of said Mississippi River.

That lately a number of persons, representing themselves to be butchers, have petitioned the city council of New Orleans

4 to grant them the privilege of slaughtering animals in the parish of Orleans at other places than the slaughter-houses of petitioner, and in derogation of petitioner's exclusive privileges and rights, as aforesaid set forth, pretending that the present constitution of the State of Louisiana had abrogated petitioner's exclusive privileges aforesaid, and that the said city council of New Orleans had the right to assign or designate a locality or localities within the limits of said city for the construction and maintenance of slaughter-houses in the city and parish of Orleans, and petitioner avers that the city council of New Orleans has entertained the petition and proposition of the said petitioning butchers, and are about to designate a place or places for slaughtering animals intended for human food in the parish of Orleans, Jefferson, and St. Bernard at other places in the parish of Orleans than the slaughter-house of petitioner, and at places above the United States barracks on the east or left bank of the Mississippi River and above Morgan's railroad depot, on the west or right bank of said Mississippi River, all of which is in derogation of petitioner's aforesaid vested rights and exclusive privileges, and contrary to the statutes and laws of the State of Louisiana, and of the Constitution of the United States.

5 That the granting of the prayer of said petition or the designation of any other place or places, by said city of New Orleans, than the slaughter-houses of petitioner for the landing, yarding, shel-

tering and slaughtering of animals intended for human food in the parishes of Orleans, St. Bernard, & Jefferson, would cause a damage to petitioner to an extent and for an amount exceeding one thousand dollars, and would cause an irreparable injury to petitioner.

Petitioner avers that there is no reason for the designation of other localities for slaughtering or landing animals as aforesaid other than the buildings and yards of petitioner, for said buildings and yards are adequate for all the purposes of slaughtering and landing, and are supplied with all the necessary appliances to speedily and cheaply accomplish the work, and insure cleanliness, and the proposed action of the city council of New Orleans is not only unnecessary, but a violation of a proper system of hygiene for the preservation of the health of New Orleans. That the granting of the prayer of said petition and the passage of an ordinance designating other places for landing animals and the slaughtering thereof as aforesaid will give rise to a multiplicity of suits and will operate of itself a great hardship on petitioner and produce great injury to it and depreciate the value of its stock and its franchises.

6 Wherefore petitioner prays that in consideration of the premises and of the bond and affidavit hereto annexed, a writ of injunction issue restraining the city of New Orleans and the city council of New Orleans from entertaining any petitions for, and from ever designating a place or places for the landing, yarding, sheltering, or slaughtering any animal or animals intended for human food in the parishes of Orleans, Jefferson, and St. Bernard, other than at the slaughterhouses and premises of petitioner, and above the United States barracks on the east or left bank of the Mississippi River, and above the depot of Morgan's Louisiana and Texas Railroad, on the west or right bank of said Mississippi River, and that the injunction be made perpetual, and that said city of New Orleans be condemned to pay petitioner twelve hundred dollars damages and for costs and general relief.

(Signed) ROBERT MOTT,
THOS. J. SEMMES & PAYNE,
Att'ys for Pl'ff.

Affidavit annexed to petition.

Joseph Hernandez being duly sworn, deposes and says that he is president of the Crescent City Live-stock Landing and Slaughterhouse Company; that he has read the foregoing petition, and that the averments thereof and the facts therein set forth are true to the best of his knowledge and belief.

(Signed) JOS. HERNANDEZ,
Pres'd't.

7 Sworn to and subscribed before me this 4th day of February, 1880.

[SEAL.] (Signed) R. C. MOTT,
Not. Pub. in & for the Parish of Orleans, State of Louisiana.

Order.

Let a writ of injunction issue herein as prayed for and according to law, upon petitioner furnishing bond with good and solvent security in the sum of fifteen hundred dollars, conditioned as the law directs.

New Orleans, February 5th, 1880.

(Signed) W. H. ROGERS, *Judge.*

Bond of injunction annexed to petition.—Filed February 5th, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS & ALS. } No. 10494.

Fifth district court for the parish of Orleans.

Know all men by these presents that we, the Crescent City Live-stock Landing and Slaughter-house Company as principal, and Joseph Hernandez and B. Saloy as sureties, of the city of New Orleans and State of Louisiana, are held and firmly bound unto the City of New Orleans, executors, administrators, heirs, and assigns, in the sum
8 of fifteen hundred ($1,500) dollars, lawful money of the United States of America, to be paid to the said City of New Orleans, its executors, administrators, heirs, and assigns; for which payment well and truly to be made to the said above-named defendant, its executors, administrators, heirs, and assigns, we bound ourselves, in solido and each us by himself, and each of our executors, administrators, heirs, and assigns, firmly by these presents, sealed with our seals and dated the day of February, 1880.

Whereas the said Crescent City Live-stock Landing and Slaughter-house Company has this day presented a petition to the honorable the fifth district court for the parish of Orleans, praying for a writ of injunction to issue against said above-named defendant:

Now the condition of the above obligation is that we, the above bound Crescent City Live-stock Landing and Slaughter-house Company, principal, and Joseph Hernandez & B. Saloy, sureties, will well and truly pay to the said City of New Orleans, the defendant in said injunction suit, all such damages as may recover against us, in case it should be decided that the said injunction was wrongfully obtained.

(Signed) JOSEPH HERNANDEZ, *Pres'd't.* [L. S.]
" JOSEPH HERNANDEZ. [L. S.]
" B. SALOY [L. S.]

9 *Petition of intervention of Martin Wolff and order.—Filed* 19 *Feb'ry*, 1880.

CRESENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS & ALS. } No. 10494.

Fifth district court for the parish of Orleans.

To the honorable the judge of the 5th district court in and for the parish of Orleans:

The petition of intervention of Martin Wolff, filed herein, on the leave of court first had and obtained, represents that he is engaged in the slaughtering of animals and sale of meat in the upper portion of the city of New Orleans, and is largely interested in the result of this suit. That the plaintiff herein, who he opposes has no right under the law or otherwise, of the privilege, as claimed, of slaughtering animals exclusively at their yards as located and claimed in their petition herein.

That what is known as the slaughter-company, so called, is an agent of the State of Louisiana, is a mere agent of the State of Louisana, and has no monopoly or legal right to the exclusive privilege of slaughtering animals for food, and that the application for injunction should be refused.

10 Wherefore he prays for judgment in his favor and against said plaintiff in so far as injunction herein is demanded, and for general relief in the premises.

(Signed) J. BELDEN.
" CLEMENT BROWN.

Order.

Let this petition of intervention be filed as prayed for and according to law.

New Orleans, February 19th, 1880.

(Signed) W. H. ROGERS, *Judge.*

Answer of the city of New Orleans.—Filed 3d March, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS, } No. 10494.

Fifth district court for the parish of Orleans.

Now into this honorable court comes defendant, City of New Orleans, through her undersigned attorney, and for answer to plaintiff's petition, pleads a general denial to each and every allegation therein contained, in so far as the same may have a tendency to give said plaintiff any right or cause of action against this respondent.

Further answering, respondent alleges and avers that the
11 statute of the State of Louisiana, entitled "An act to protect the health of the city of New Orleans; to locate the stock-landing and slaughter houses and to incorparate the Crescent City Live-stock Landing and Slaughter-house Company," approved 8th March, 1869, is a public statute, and the powers therein granted to plaintiff were delegated and conferred under the general police power of the State.

That plaintiff, the grantee under said statute, gave no bonus and paid no consideration whatever, either to the State or to the city for the exclusive rights, privileges, and benefits thereby conferred.

That the license and permission conferred by said statute do not create or form a contract between plaintiff and the State.

That the general assembly of 1869 could not irrevocably or for a limited time divest the State of its police power nor prevent subsequent legislatures from revoking and realizing the privileges granted by the act referred to.

That by article 244 of the constitution of 1879 it is provided "that the constituted authorities of all incorporated municipalities of the State shall alone have the power of regulating the slaughtering of cattle and other live-stock within their respective limits, provided
12 no monopoly or exclusive privilege shall exist in this State, nor such business be restricted to the land or houses of any individual or corporation, provided the ordinances designating the places for slaughtering shall obtain the approval of the board of health or other sanitary organization."

That the aforesaid article of the constitution of this State is legal, valid, binding, and obligatory upon all the inhabitants of this State, both individuals and bodies corporate and amounts to a revocation of the powers granted to plaintiff under the act of 1869, and repeals the monopoly or exclusive privilege created by said statute in plaintiff's favor.

That in accordance with said constitutional provision your respondent, through her city council, was about passing an ordinance, with the concurrence of the board of health of this city, regulating the slaughtering of cattle and other live-stock within her limits and designating the places for slaughtering when arrested and prevented by the writ of injunction herein issued. That no court has a right to enjoin the execution of the constitution or any provision thereof.

Respondent specially denies that the above-recited provision of the constitution of this State violates in any manner the Constitution of the United States.

That respondent has suffered damages by the illegal acts of
13 the plaintiff; that plaintiff's demand be rejected and dismissed, and that plaintiff and the surety on its injunction bond be condemned in solido to pay unto respondent one thousand dollars ($1,000) damages; that the writ of injunction herein issued be dissolved and set aside, with costs.

And for general relief.

(Signed) E. HOWARD McCALEB,
City Attorney for the City of New Orleans, Defendant.

Order fixing case.—Extract from the minutes March 22d, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans.

On motion of Robert Mott, of counsel for plaintiff, it is ordered by the court that this cause be fixed for trial on Monday, the 29 inst., at 12 o'clock m., and that E. H. McCaleb and Beldin & Brow' be notified hereof.

Order and continuance.—Extract from the minutes March 29th, 1880.

14 CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans.

This cause is continued till Monday next, the 5th day of April, 1880, at 12 o'clock m.

Order and continuance.—Extract from the minutes April 5th, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans.

This cause is continued till Monday, the 12 inst., at 12 o'clock m.

Order: Case submitted.—Extract from the minutes April 12th, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans.

15 This cause came on this day for trial.—Robert Mott & T. J. Semmes, for plaintiff; E. H. McCaleb, for defendant; E. K. Washington, for intervenors.—when, after hearing pleadings, evidence, and counsel, said cause being submitted, the court took the same under advisement.

Testimony & notes of evidence.—Filed 12th April, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans.

Testimony and notes of evidence taken in open court before the honorable W. H. Rogers, judge, April 12th, 1880.

AGREEMENT.—It is agreed that the following is a state of the facts on which the case is to be tried:

That the plaintiff was incorporated by act of the legislature of the State of Louisiana, No. 118, approved 8th of March, 1869, and that the plaintiffs have established slaughter-houses in compliance with the act, and that a number of butchers have petitioned the city council of New Orleans to establish limits for the slaughtering of animals under article No. of 1879, of the constitution, and that the common council of the city of New Orleans, in compliance
16 with article 244 of the constitution of 1879, is about to regulate the slaughtering of cattle and other live-stock within the limits of the city of New Orleans, and was about to designate the place for slaughtering, when arrested and prevented by an injunction issued in this case, all of which the council propose to do, under and by virtue of article 244 of the constitution of 1879, in compliance with its provisions.

Mr. McCaleb agrees to produce the petition of the butchers on which the action of the city was based, and offers in evidence, the opinion of the city attorney thereon.

Counsel for plaintiff object.

The court admits it, simply to prove rem ipsam.

Mr. McCaleb also offers in evidence the action of the council thereon, with reference to the city attorney and the opinion given on said reference.

AGREEMENT.—It is agreed that the statement of the mayor shall be furnished, showing the declaration of these butchers, that it was their intention to locate above Canal street.

NOTE.—Mr. Mott, of counsel for plaintiffs, offers in evidence the statute of 1877, No. 144, with the approval thereon of the 16 May, 1877.

ADMISSION.—It is admitted that the statement of facts, which necessitated the passage of act No. 118 of 1869, as set forth in the opinion of the Supreme Court in the case of Belden, attorney general, against Fagan, 22d Annual, page 551 down to page 553, inclusive,
17 is a correct statement of the facts, and are applicable now, just as well as they were then in 1870.

ADMISSION.—It is admitted the Auxilliary Sanit'y Association of the city of New Orleans passed a resolution, now offered in evidence and marked "A," and that the members of the association that passed it, if present, would swear that that is their opinion. It is also admitted that the officers of the New Orleans Water Works Company, if present would swear that they object in the strongest manner to the establishment of any slaughter-house above the water-works.

JOHN GLYNN sworn.

Direct examination by Mr. MOTT:

Q. Mr. Glynn are you one of the members of the city council?

A. Yes, sir. I am administrator of public accounts.

Q. You recollect an application having been made to the city for permission to locate a slaughter-house lately?

A. Yes, sir; I did not read the application, but I was present at an interview. The butchers handed in an application.

Q. The same application spoken of by the city attorney just now, wasn't it?

A. I have just got here.

Q. Did the parties state where they wanted to place this slaughter house?

18 A. They asked to appear before a committee of the council, at least the administrators, and they did appear before them in the morning. I do not remember the date now—some ten days ago, I believe, and they called on the council a second time, later in the day. I was present at the latter time. The mayor and council were all present.

Q. Did they state where they wanted to locate the slaughter-house?

A. Yes, sir; my impression is that they asked to have it located where it was before.

Q. Where is that, up in the sixth district?

A. Yes, sir; where the old slaughter-house was.

Q. Their desire was to get permission to locate it on their old property in the sixth district of New Orleans?

A. As I understand their request they wanted to pass an ordinance in conformity with the constitution to locate a slaughter-house at that point. We made the point that there was a suit pending which prohibited the city from taking any action in the matter.

Q. Whereabouts in regard to the city of New Orleans, in the sixth district, above or below?

A. It is above.

Q. Between this and Carrollton?

A. Yes, sir; the district which is below Carollton.

Q. Is it between the fourth district and Carollton, as I understand it?

19 A. Yes, sir.

Cross-examination by Mr. McCaleb:

Q. You are administrator of public accounts?

A. Yes, sir.

Q. Do you know whether it has ever been the intention of the city council to grant permission to any man or any set of men; has the city done anything, or proposed to do any act, or to pass any resolution or ordinance locating the slaughter-house in the former city of Jefferson, on Louisiana avenue?

A. Not as long as this injunction against the city is not dissolved. We have not considered the matter on account of this injunction pending against the city.

Q. Don't you know, Colonel Glynn, there have been two or three petitions sent in there by different butchers or associations of butchers?

A. I don't know; lately I have taken very little interest in the matter, on account of this injunction pending, and the council has not taken any action in the matter.

Q. Don't you know there was a petition *there was a petition* sent in before this injunction was set out?

A. Yes, sir; there was, some time ago.

Q. What action had the council taken or proposed to take on that petition?

(Note.—Objected to by Mr. Mott.)

Q. The facts that you state in relation to the representation
20 made by these butchers—what you heard was after the institution of this suit, about ten days ago, you say?

A. Yes, sir; about—as well as I remember—about ten days or two weeks ago.

Q. They were different persons and different associations and persons from those applying before the institution of the suit, were they not?

A. I believe they were. I understand that these parties that applied—I do not remember the name of the association.

Admission.—It is admitted that the abattoirs of the plaintiff corporation, located on the left bank, are below what is known as the United States barracks, and within the limits of the parish of Saint Bernard; and the slaughter-house on the right bank of the Mississippi River, located and established by the plaintiff corporation, is within the limits of the parish of Orleans and below the terminus of the Opelousas Railroad.

Note.—Mr. Mott, of counsel for plaintiff, offers in evidence especially act No. 118, approved the 8th of March, 1870, and copy of petition marked "B." It is admitted that the present value of the property, and so on, of this company is worth $499,745.72 as costs of the buildings, machinery and land, and that the company has been in operation over ten years and only paid three dividends of five per cent. (5 %)
21 each, amounting in all to $75,000; and that there was ten thousand shares of stock of fifty dollars each, making a capital of five hun-

dred thousand dollars ($500,000), and that the last quotations of the stock in *in* the market were, twenty-four and a half bid and twenty-six and a quarter asked, and that the corporation is in the full exercise of all its powers as a corporation of the State of Louisiana.

It is admitted that the slaughter-house on the right bank of the Mississippi River below Morgan's Landing has been kept up by the company in consequence of a decision of the supreme court that is reported in the case: Barton against the Crescent City Live-stock Landing & Slaughter-house Company, reported in Twenty-eighth Annual, page 211, which decision may be referred to as a part of this case.

Doctor HENRY BEZOU sworn.

Direct examination by Mr. MOTT:

Q. Doctor Bezou, were you the coroner of any portion of the city of New Orleans?

A. Second and third districts.

Q. Have you been sanitary inspector in that portion of the city for any time?

A. I have been in the third district for three years.

Q. Do you know anything about the present slaughter-house company and abattoirs on this side of the river?

22 A. I do, sir; whilst I was sanitary inspector of that district it was under my supervision.

Q. In pursuit of your functions as sanitary inspector, coroner, and so on, have you become familiar with the character of the abattoir, and the effect of it, and the benefit or injury of its position?

A. It could not be better located than it is now located.

Q. I ask whether it is a matter of value to the community, whether it has been beneficial, and the general effect of the location of the slaughter-house there, and its management—you are peculiarly able to tell from your having been employed as you were?

A. My only objection to having the slaughter-house or abattoir situated above the city would be that it would be above the current, and all the refuse matter which would come from the abattoir and be thrown into the river would, in the end, be washed above the city limits, and might stagnate there, as it did in the past, and, I think; in the course of time, it would become detrimental to the health of the city.

By Mr. SEMMES:

Q. You think it is best to have it located below the city, where it is?

A. Yes, sir; I do.

NOTE.—After argument in this case, counsel for plaintiff object
23 to the introduction of the petition of the butchers and all documents connected therewith, and the court thereupon orders that they be considered offered as rem ipsam, and not as evidence.

Mr. McCaleb, counsel for defendant, reserves a bill of exceptions to the ruling of the court on the ground that it is urged in this very petition that the butchers have petitioned the city of New Orleans, and that the butchers are endeavoring to persuade the city of New Orleans to establish butcher-houses in other parts of the city of New Orleans.

Petition of sundry butchers in relation to slaughter-house co., offered in evidence by Mr. McCaleb.—Filed April 12th, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans.

To honorable I. W. Patton, mayor of the city of New Orleans, and the board of administrators.

We, the undersigned butchers of the city of New Orleans, with great respect take the liberty of submitting facts for your grave deliberation and official consideration. In year A. D. 1869 the legislature
24 of Louisiana, composed in a great measure of ignorant and designing partisans, misrepresentatives, gave legislative sanction to a bill authorizing seventeen (17) persons to establish a monopolizing slaughter-house company, in derogation, as we believe and feel, of the equal rights of the undersigned and others engaged in the business of butchers in this city. The effect of this unjust and unconstitutional monopoly has been, and must continue to be, a materially enhanced price for the meats butchered for all the consumers of this city. We have strenuously and faithfully remonstrated against this despotic monopoly in every way we could. We now resort to our constitutional right of petition to your honorable body. Under the lately-adopted constitution of Louisiana, article 258, the monopoly features of all chartered corporations of this State were abolished, "save such as may be contained in the charter of railroads—of railroad companies." This, then, abolishes the monopoly features of the slaughter-house company and leaves the legislature and your honorable body free to authorize the undersigned to pursue their vocation in such manner and at such place as the public interest may sanction.

We beg leave to say that the public interest is not promoted
25 or subserved by the many inconveniences that unavoidably attend our submission to the present slaughter-house monopoly. To supply our customers in the upper part of the city we are compelled to submit to money exactions in obtaining *are* daily supplies of butchered meats. These, together with costs of conveyance, must be superadded to the price of meats when served to consumers; for it must be borne in mind that we cannot cart them from the slaughter-house to our place of business without heavy outlays to us. These we necessarily add to the price of meets. Three hundred and sixty-five days in the year we are obliged to employ drivers, teams, carts, wagons, &c., for the purpose of having the meats at our stalls for the use of consumers. The costs to us are enormous, as your honorable body will readily perceive by a moment of reflexion. It may be said that the consumer pays it; but why should he?

Again, we submit to you the inevitable deterioration which fresh meats necessarily undergo from being jolted over a space of about seven (7) miles to nine (9) miles of stony streets, exposed to the warm, and oftentimes inclement weather. Every one at all acquainted with our business knows perfectly well that fresh meat loses its flavor, its consistence, and its freshness whenever subjected to such an ordeal.
26 Finally, we respectfully claim the rights of every inhabitant of

this country in being permitted to pursue our humble but necessary vocation, under the supervision of your honorable body, by establishing a slaughter-house nearer to the center of the city, where we may butcher with less expense to ourselves, and with less to consumers, and a better article of meat to the people, and that, too, without detriment to the public health.

We respectfully ask your honorable body to take this petition under careful consideration, to act upon it, by granting us the relief we humbly believe we are entitled to under the newly adopted constitution of Louisiana:

Arman Troenher.
Peter Kissgen.
Henry Pudderer.
Colman Troescher.
C. Trayer.
Francis Bruseau.
Fn Seiver.
Henry Sevon.
Dan'l Habies.
Wm. Hommann.
Nicholas Gustine.
G. Bultmann.
Jacob Schwenk.
B. Diebat.
J. Labarre.
L. Mouldmous.
Louis Labarre.
B. Gourges.
J. M. Deshantreaux.
Martin Lannes.
Frank Remann.
George Kieffer.
Anthony Rapp.
J'n McDespans.
Louis Wiznau.
Michael Long.
Pierre Sabati.
Joseph Tusague.
S. Ternberry.
M. Esparras.
J. Danneys.
A. Bultmann.
B. Naab.
J. Wm. Lannes.
Jas. Barrière.
E. Poque.
H. Solard.
J. A. Galiber.
L. Wingire.
J. Mailhe.
M. Deshantreaux.
Joseph Laguens.
Jules Abadie.
P. Lannes.
T. Loustalot.
Bernard Fusague.
Siloam Fusague.
Y. M. Abadie.
P. Lannes.
D. O. Farrell.
B. Mouledon.
George Achor.
Ernest Deshantreaux.
Julien Massam.
Adam Ottmann.
Antoine Tarran.
Pierre Mouledons.
Julien Dutrey.
Gabriel Fortassin.
B. Davie.
F. W. Fullmer.
D. Mouledons.

27

(Endorsed:) Ref'd to committee of the whole by council, January 6th, 1880.

(Signed) R. C. WOOD, *Sec'ty.*

(Endorsed:) Mayoralty of N. O., Jan'y 13th, 1880. Resp'y ref'd to city attorney by order com. of whole.

(Signed) CHAS. MACMURDO, *Pr. Sec'ty.*

Opinion of city attorney, offered in evidence by Mr. McCaleb.—Filed 12th April, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

28 Fifth district court for the parish of Orleans.

OFFICE CITY ATTORNEY,
City Hall, New Orleans, Jan'y 26th, 1880.

To the Hon. the mayor and administrators, city of New Orleans.

GENTLEMEN: In reference to the application of the butchers, complaining of the monopoly features of The Crescent City Slaughter-house Company, and asking your honorable body to pass an ordinance designating the places and limits within which parties shall have the right of slaughtering cattle and other live-stock, I report:

That by article 248 of the constitution of 1869, the authorities of all incorporated municipalities of the State alone have the power of regulating the slaughtering of cattle and other live-stock within their respective limits; and it is further provided that no monopoly or exclusive privilege shall exist in this State, nor such privileges be restricted to the land or houses of any individual or corporation: provided, the ordinances designating the places for slaughtering shall obtain the concurrent approval of the board of health or other sanitary organization.

29 Under this provision of the organic law the council has the undoubted right to designate the limits within which slaughter-houses may be erected and the business of slaughtering cattle carried on. Such ordinance will have to be passed with the concurrence of the board of health.

If the council will indicate the limits within which, in their judgment, it will be prudent to permit the erection of slaughter-houses in this city, I will, after conference with the attorney of the board of health, prepare an ordinance in accordance with your instructions upon this subject.

2nd. In the case of the State ex rel. Belden vs. Fagan, 22nd Annual, p. 545, the supreme court of this State held that the power conferred on the Crescent City Live-stock Landing and Slaughter-house Company, by virtue of the act approved March 8th, 1869, was delegated to said corporation under the police powers of the State, and that the statute in question was a public statute coming strictly within the police powers.

The Supreme Court of the United States subsequently affirmed this decision, holding that it was a police regulation for the health and comfort of the people (see Slaughter-house Cases, 16 Wallace, 56).

Being a public statute and a police regulation the constitutional convention had the right to recall and revoke a power thus previ-
30 ously vested in the Slaughter-house Company, and it now becomes your duty under the article of the constitution above cited to carry into effect by ordinance the provision contained in the organic law.

Very respectfully,
(Signed) E. HOWARD McCALEB.
City Attorney.

(Endorsed:) Reporting on petition of sundry butchers, in relation to slaughter-house co.

(Endorsed:) Ref'd to committee of the whole by council, January 27th, 1880.

(Signed) ROBT. C. WOOD, *Sec't'y.*

Statute of 1877, *No.* 144, *offered in evidence by Mr. Mott.—Filed* 12*th April*, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans.

No. 144. An act to amend an act entitled, "An act to protect the health of the city of New Orleans; to locate the stock-landing and slaughter-houses, and to incorporate the Crescent City Live-stock Landing and Slaughter-house Company.

SECTION 1. Be it enacted by the senate and house of representa-
31 tatives of the State of Louisiana, in general assembly convened. That section one of said act number one hundred and eighteen, approved March eighth, eighteen hundred & sixty-nine be amended and re-enacted to read as follows: That from and after the first day of June, A. D. eight hundred and sixty-nine, it shall not be lawful to land, keep, or slaughter any cattle, beeves, calves, sheep, swine, or other animals, or to have, keep, or establish any stock-landing yards, pens, slaughter-houses, or abattoirs at any point or place within the city of New Orleans, except the seventh district thereof, where such keeping or slaughtering shall be limited to the actual consumption of the parishes of Orleans, Jefferson, and St. Bernard, except as aforesaid or at any point or place on the east bank of the Mississippi River within the corporate limits of the city of New Orleans, or at any point on the west bank of the Mississippi River, above the present depot of the New Orleans, Opelousas and Great Western Railroad Company, except that the Crescent City Live-stock Landing and Slaughter-house Company may establish themselves at any point or place as hereinafter provided.

Any persons or person, or organization or company, carrying on any business or doing any act in contravention of this act, or landing, or keeping, or slaughtering any animal or animals in violation of this
32 act, except as herein provided, shall be liable to a fine of two hundred & fifty dollars for each and every violation, the same to be recoverable with cost of suit before any court of competent jurisdiction.

SECTION 2D. Be it further enacted &c, That this act shall go into effect upon its passage, and that all laws or parts of laws conflicting herewith be and the same are hereby repealed so far as they conflict.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant-Governor and President of the Senate.

Approved M'ch 16th, 1877.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy.

(Signed) WILL. A. STRONG,
Secretary of the State.

Resolution marked "A" of the Auxiliary Sanitary Association of N. O., offered in evidence.—Filed 12th April, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans:

By Mr. GINDER:

33 Resolved, That it is the sense of the N. O. Auxiliary Sanitary Association that the establishment of a slaughter-house in any part of thecorporate limits of the city would be exceedingly detrimental to its health, and should by no means receive the consent of our city authorities.

Seconded by James Jackson, and unanimously adopted.

(Is published in full in Democrat.)

Act No. 118, offered in evidence by Mr. Mott.—Filed 12th April, 1880.

CRESENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans.

An act to protect the health of the city of New Orleans, to locate the stock-landings and slaughter-houses, and to incorporate the "Crescent City Live-stock Landing and Slaughter-house Company."

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That from and after the first day of June, A. D. (1869) eighteen hundred and sixty-nine, it shall not be lawful to land, keep, or slaughter any cattle, beeves, calves, sheep, swine, or any other animal, or to have, keep,
34 or establish any stock-landing, yards, pens, slaughter-houses, or abattoirs at any point or place within the city of New Orleans, Jefferson, and St. Bernard, or at any point or place on the east bank of the Mississippi River, within the corporate limits of the city of New Orleans, or at any point on the west bank of the Mississppi River, above the present depot of the New Orleans, Opelousas, and Great Western Railroad Company, except that the "Crescent City Live-stock Landing & Slaughter-house Company," may establish themselves at any point or place as hereinafter provided. Any person or persons, or corporation or company, carrying on any business, or doing any act in contravention of this act, or landing, slaughtering, or keeping any animal or animals in violation of this act, shall be liable to a fine of two hundred and fifty ($250) dollars for each and every violation, the same to be recoverable with costs of suit before any court of competent jurisdiction.

SECTION 2. Be it further enacted, &c., That William D. Sanger, Joseph H. Pearson, J. R. Irwin, John Wharton, Franklin J. Pratt, R. T. Packwood, W. W. Travis, Henry V. Barringer, L. P. Sanger, W. S. Mudgett, Oliver D. Russell, J. Viosea, S. P. Griffen, L. H. Crippin, William

McKenna, A. J. Olivier, F. G. Clark, and their successors, be, and are hereby, created a body politic and corporate, to be known and designated as the "Crescent City Live-stock Landing & Slaughter-
35 house Company," and by that name and style shall sue and be sued, purchase, hold, sell, contract, lease, and release, grant and transfer, and may do all things necessary for the purposes hereinafter mentioned, and perform all other acts, and exercise and enjoy all other rights and privileges incident to corporations, adopt and use a common seal, make, publish, and alter at pleasure by-laws, rules, and regulations for the government of the company or corporation, and the carrying on of its business, shall determine and appoint their officers, and fix their compensation and term of office, and shall fix the amount of the capital stock of the said company or corporation, and the number of shares thereof. The domicile of the company or corporation shall be in the city of New Orleans, and the president shall be the proper officer on whom to serve citations, notices, and other legal process wherein this company or corporation may be interested.

SEC. 3. Be it further enacted, &c., That the said company or corporation is hereby authorized to establish and erect at its own expense, at any point or place on the east bank of the Mississippi River, within the parish of St. Bernard, or in the corporate limits of the city of New Orleans, below the United States barracks, or at any point or place on the west bank of the Mississippi River below the present depot
36 of the New Orleans, Opelousas, and Great Western Railroad Company, wharves, stables, sheds, yards, and buildings necessary to land, stable, shelter, protect, and preserve all kinds of horses, mules, cattle, and other animals from and after the time such buildings, yards, &c., are ready and complete for business, and notice thereof is given in the official journal of the State. And the said Crescent City Live-stock Landing and Slaughter-house Company shall have the sole and exclusive privilege of conducting and carrying on the live-stock landing and slaughter-house business within the limits and privileges granted by the provisions of this act, and cattle and other animals destined for sale or slaughter in the city of New Orleans or its environs, shall be landed at the live-stock landing and yards of said company, and shall be yarded, sheltered, and protected, if necessary, by said company or corporation; and said company shall be entitled to have and receive for each steamship landing at the wharves of the said company or corporation ten ($10) dollars; for each steamboat or other water craft, five ($5) dollars; and for each horse, mule, bull, ox, or cow, landed at their wharves, for each and every day kept, ten (10 c.) cents; for each and every hog, calf, sheep, or goat, for each and every day kept, five (5 c.) cents; all without including feed; and the said company or corporation shall be entitled to keep and detain each and all of
37 said animals until said charges are fully paid. But if the charges of landing, keeping, and feeding any of the aforesaid animals shall not be paid by the owners thereof after fifteen days of their being landed and placed in the custody of the said company or corporation, then the said company or corporation, in order to reimburse themselves for charges and expenses incurred, shall have power, by resorting to judicial proceedings, to advertize said animals for sale by auction, in any two newspapers published in the city of New Orleans for five days, and after the expiration of said five days, the said company or corporation may proceed to sell by auction, as advertised, the said animals, and the proceeds of such sales shall be taken by the said company or corporation, and applied to the payment of the charges and expenses aforesaid, and other

additional costs; and the balance, if any, remaining from such sales, shall be held to the credit of and paid to the order of or receipt of the owner of said animals. Any person or persons, firm, or corporation violating any of the provisions of this act, or interfering with the privileges herein granted, or landing, yarding, or keeping any animals in violation of the provisions of this act, or to the injury of said company or corporation, shall be liable to a fine or penalty of two hundred and fifty ($250) dollars, to be recovered, with costs of suit, before any court of competent jurisdiction.

38 The company shall, before the 1st of June (1869) eighteen hundred and sixty-nine, build and complete a grand slaughter-house of sufficient dimensions and capacity to accommodate all butchers, and in which to slaughter five hundred animals per day; also that a sufficient number of sheds and stables be erected before the date aforementioned, to accommodate all the stock received at this port, all of which to be accomplished before the date fixed for the removal of the stock landing, as provided in the first section of this act, under penalty of a forfeiture of their charter.

SEC. 4. Be it further enacted, &c., That the said company or corporation is hereby authorized to erect, at its own expense, one or more landing-places for live-stock, as aforesaid, at any points or place consistent with the provisions of this act, and to have and enjoy from the completion thereof, and after the first day of June, A. D. (1869) eighteen hundred and sixty-nine, the exclusive privilege of having landed at their wharves or landing-places all animals intended for sale or slaughter in the parishes of Orleans and Jefferson; and are hereby also authorized (in connection) to erect at its own expense one or more slaughter-houses at any points or places consistent with the provisions of this act, and to have and enjoy from the completion thereof,

39 and after the first day of June, A. D. (1869) eighteen hundred and sixty-nine, the exclusive privilege of having slaughtered therein all animals, the meats of which is destined for sale in the parishes of Orleans and Jefferson.

SEC. 5. Be it further enacted, &c., That whenever said slaughter-house and accessory buildings, shall be completed and thrown open for the use of the public, said company or corporation shall immediately give public notice for thirty days, in the official journal of the State, and within said thirty days' notice, and within, from, and after the first day of June, A. D. (1869) eighteen hundred and sixty-nine, all other stock-landings, and slaughter-houses within the parishes of Orleans, Jefferson and St. Bernard, shall be closed, and it will no longer be lawful to slaughter cattle, hogs, calves, sheep, or goats, the meat of which is destined for sale within the parishes aforesaid, under a penalty of one hundred ($100) dollars for each and every offense, recoverable with costs of suit, before any court of competent jurisdiction. That all animals to be slaughtered, the meat whereof is destined for sale in the parishes of Orleans or Jefferson, must be slaughtered in the slaughter-house erected by the said company or corporation, and upon a refusal of said company or corporation to allow any animal or animals to be slaughtered after the same has been certified by the inspector

40 as hereinafter provided, to be fit for human food, the said company or corporation shall be subject to a fine in each case of two hundred and fifty dollars, recoverable, with costs of suit, before any court of competent jurisdiction, said fines and penalties to be paid

over to the auditor of public accounts, which sum or sums shall be credited to the educational fund.

SEC. 6. Be it further enacted, &c., that the governor of the State of Louisiana shall appoint a competent person, clothed with police powers, to act as inspector of all stock that is to be slaughtered, and whose duty it will be to examine closely all animals destined to be slaughtered, to ascertain whether they are sound and fit for human food or not; and if sound and fit for human food to furnish a certificate stating that fact to the owners of the animals inspected; and without said certificate no animals can be slaughtered for sale in the slaughter-houses of said company or corporation. The owner of said animals so inspected to pay the inspector ten (10c.) cents for each and every animal so inspected, one-half of which fee the said inspector shall retain for his services, and the other half of said fee shall be paid over to the auditor of public accounts, said payment to be made qua'terly. said inspector shall give a good and sufficient bond to the State in the sum of five thousand dollars, with sureties subject to the ap-
41 proval of the governor of the State of Louisiana, for the faithful performance of his duties. Said inpectors shall be fined for dereliction of duty fifty ($50) dollars for each neglect. That said inspector may appoint as many deputies as may be necessary. The half of the fees collected as provided above, and paid over to the auditor of public accounts, shall be placed to the credit of the educational fund.

SECTION 7. Be it further enacted, &c., That all persons slaughtering or causing to be slaughtered cattle or other animals in said slaughter-house shall pay to the said company or corporation the following rates or perquisites, viz: For all beeves, one ($1) dollar each; for all hogs and calves, fifty (50c.) cents; for all sheep, goats, & lambs, (30 cts.) thirty cents each; and the said company or corporation shall be entitled to the head, feet, gore, and entrails of all animals excepting hogs, entering the slaughter-house and killed therein; it being understood that the heart and liver are not considered as a part of the gore and entrails, and that the said heart and liver of all animals slaughtered in the slaughter-houses of the said company or corporation shall belong in all cases to the owners of the animals slaughtered.

SEC. 8. Be it further enacted, &c., That all the fines and penalties incurred for violations of this act shall be recoverable in a civil suit before any court of competent jurisdiction, said suit to be brought and prosecuted by said company or corporation in all cases
42 where the privileges granted to the said company or corporation by the provisions of this act are violated or interfered with; that one-half of all the fines and penalties recovered by the said company or corporation, in consideration of their prosecuting the violation of this act, and the other half shall be paid over to the auditor of public accounts to the credit of the educational fund.

SEC. 9. Be it further enacted, &c., That the said Crescent City Live, stock Landing and Slaughter-house Company shall have the right to construct a railroad from their buildings to the limits of the city of New Orleans, and shall have the right to run cars thereon, drawn by horses or other locomotive power as they may see fit; said railroad to be built one ither of the public roads running along the levee on each side of the Mississippi River. The said company or corporation shall also have the right to establish such steam ferries as they may see fit, to run on the Mississippi River between their buildings and any points or places on either side of said river.

SEC. 10. Be it further enacted, &c., That at the expiration of twenty-

five years from and after the passage of this act, the priviliges herein granted shall expire.

SEC. 11. Be it further enacted, &c., That all laws or parts of
43 laws contrary to or inconsistent with the provisions of this act, be and the same are hereby repealed.

SEC. 12. Be it further enacted, &c., That this act shall take effect from and after the first day of June, A. D. (1869) eighteen hundred and sixty-nine.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved March 8th, 1869.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:

(Signed) GEORGE E. BOVEE,
Secretary of State.

UNITED STATES OF AMERICA,
State of Louisana, City of New Orleans:

Be it known that on this twenty-second day of March, in the year of our Lord one thousand eight hundred and sixty-nine, before me, John Wilson Shaw, a notary public in and for the parish of Orleans, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared S. P. Griffin, F. J. Pratt, Edward S. Wurzburger, transferee of N. W.
44 Travis; Jonas Pickles, transferee of J. R. Irwin; John Wharton, James G. Clark, E. B. Benton, for self as transferee of William McKenna, also as agent for John Lockwood, transferee of Henry V. Barringer; Oliver D. Russell, R. T. Packwood, J. H. Crippen, and William Durbridge, successor to A. J. Oliver, all of whom are of the full age of majority, who declared and said that they are desirous of forming themselves, their constituents, associates, and successors into a corporation and body politic under and by virtue of an act of the legislature of the State of Louisiana, approved March 8th, 1869, entitled An act to protect the health of the city of New Orleans, to locate the stock-landings and slaughter-houses, to incorporate "The Crescent City Live-stock Landing & Slaughter-house Company," and also under and by virtue of the provisions of the general statutes of the State of Louisiana, relative to the organization of corporations in this State, and particularly of the act approved March 14th, 1855, entitled an act "for the organization of corporations for works of public improvements and utility," and with the view of carrying their desire into effect and in order to acquire and enjoy the rights, privileges, and power of a body corporate and politic in law, they now agree and subscribe to this act of incorporation and bind themselves, their associates, constituents, and successors by the following articles and conditions:

45 ARTICLE FIRST.—The name and title of this corporation shall be "The Crescent City Live-stock Landing and Slaughter-house Company." The domicil thereof shall be the city of New Orleans, and its corporate seal shall be left to the discretion of the directors. All legal proceedings shall be served on the president of the body, and said cor-

poration shall have an existence of twenty-five years from the date of the aforesaid act creating it, approved March 8th, 1869.

ARTICLE SECOND.—The object and purposes of said corporation shall be to erect, maintain, and control stock-landings and slaughter-houses for the cities of New Orleans, Jefferson, and Carrollton, under all the privileges and franchises of an act passed by the general assembly of the State of Louisiana, at its session in the year 1869, entitled an act "To protect the health of the city of New Orleans and to locate stock-landings and slaughter-houses," and to incorporate the "Crescent City Live-stock Landing and Slaughter-house Company," which act we, the corporators, do now formally accept in all its details and provisions.

ARTICLE THIRD.—The capital stock of this corporation is hereby fixed, as by resolution adopted on the 17th of March, 1869, at
46 a full meeting of the corporators at the sum of two million dollars, represented by twenty thousand shares of one hundred dollars each, of which one-half, namely, ten thousand shares are reserved and set apart as fully paid-up stock (for the purpose expressed in the said resolution of the 17th March, 1869.) The other half, or ten thousand shares shall be subscribed and paid for at the time and in the manner following, to wit: The subscribers to the said shares shall pay into the hands of the president, upon the company's organization for business, ten dollars on each and every share of stock subscribed by them, and the balance due on each and every share shall be paid in at the office of the said company in successive installments, and more than ten dollars on each share after thirty days' notice shall have been given of each such call by the board of directors in one or more newspapers published in the city of New Orleans, and should any stockholder fail or refuse to pay any installment called for at the time such installment falls due, the board of directors may declare the stock of such delinquent forfeited after thirty days' notice in one of the newspapers published in the city of New Orleans; and in that event all and every amount paid on said stock shall be forfeited to the company, or the board of directors in their discretion may enforce the pay-
47 ment of the stock subscribed from such of the delinquent subscribers as they shall deem advisable, but should the board of directors, after two years, deem it unnecessary to make any further demands of the stockholders for such residues, they are hereby authorized and empowered to issue certificates of stock as fully paid up, to all such stockholders who may have previously paid up all calls or demands made prior thereto, and shall be fully empowered at any and all times to reduce by purchase or otherwise any portion of the outstanding capital stock.

ARTICLE FOURTH.—All powers of the corporation shall be vested in a board consisting of nine directors, who shall own each at least fifty shares of capital stock, and who shall at their first meeting elect one of their own number president of board and corporation. The said corporation through their president and the directors, as fully set forth in the second section of the act of incorporation, shall have and enjoy succession, may contract, sue and be sued, and plead and be impleaded in their corporate name, make and use a corporate seal, hold, receive, purchase, and convey real property for the use of the said corporation only, and personal property, and they may invest any surplus funds in paper, secured by mortgage on property in the city of New Orleans, of at least double the value of the amount loaned, provided that
48 such loans shall be made only on a vote of at least three-fourths

of the directors. Said board of directors shall appoint a secretary and all such clerks and agents as may be necessary, may remove the same at pleasure, fix the salaries, of all officers of the corporation, and the amount of security that shall be required from any of said officers and agents, and shall make and establish such by-laws for the proper management and regulation of the affairs of said corporation, as may be necessary and proper, and five of the said board shall be necessary to form a quorum thereof, and shall have power to fill any vacancies that may occur therein by death or resignation, or any other disqualifying cause.

ARTICLE FIFTH.—On the first Wednesday in March, A. D. eighteen hundred and seventy, and annually thereafter, an election for said board of nine directors shall be held at the office of the corporation, of which election previous notice of fifteen days shall be given in two newspapers published in New Orleans, a plurality of votes, counting one for each share voted upon, shall be sufficient to elect such directors, provided that no corporation shall vote more than fifty shares, nor to vote in any share transferred to him or them within thirty days prior to such election, each shareholder at all meetings for the election of direc-
49 tors or other purposes, shall be entitled directly or by proxy, to one vote on each share of stock held by him.

The failure to elect directors as aforesaid shall not dissolve the said corporation, but the directors then in office shall hold over until another election is held, of which notice shall be given as above provided for, and shall continue until an election be held.

ARTICLE SIXTH.—All transfer of stock shall be recorded in the office of said company in a book of transfer to be kept for that purpose. The new stockholder binds himself, or herself, by the mere fact of recording such transfer, to abide by all the terms, conditions, and stipulations of this act, and any and all the rules, regulations, or by-laws made and adopted in pursuance thereof.

ARTICLE SEVENTH.—Dividends shall be declared quarterly, provided the profits of the company warrant the board of directors in declaring the same.

ARTICLE EIGHTH.—The following named incorporators, to wit, E. J. Pratt, Joseph Ellison, R. F. Packwood, J. Pickles, Wm. Durbridge, E. E. Benton, S. P. Griffin, J. G. Clark, and J. Wharton are hereby constituted the first board of directors, who shall, at their first meeting, elect one of their number as president, and the said board
50 shall serve until superseded by their successors, to be elected as provided in article fifth.

ARTICLE NINTH.—This act of incorporation may be modified, altered, or amended, and the company dissolved, at a general meeting of the stockholders, convened for such purpose or purposes, after not less than thirty days' previous notice in the English and French languages, published in the newspaper having the largest daily circulation in New Orleans, and with the assent of the stockholders holding three-fourths of the capital stock represented at such meeting, and all such modifications, alterations, or amendments of the dissolution of the company, shall be duly recorded and published according to law.

ARTICLE TENTH.—The liquidation of the affairs of said corporation at the termination of its charter, or, if sooner determined upon by its stockholders, shall be conducted by three stockholders duly elected by a three-fourths in amount of the stockholders, at a meeting convened for that purpose, after sixty days' previous notice in two newspapers published in New Orleans; the period of liquidation and the amount

of their compensation, as also all other privileges to be conferred upon said liquidators, shall be fixed in such manner as the said stockholders may, at such general meeting, determine.

United States internal revenue stamps to the amount of one
51 dollar are fixed hereto and duly cancelled at the execution hereof.

Thus done and passed in my office in the city of New Orleans aforesaid in the presence of Alfred Shaw and Frederick Heeker, competent witnesses, who hereunto sign their name with the said parties and appearers, and we, the said notary, on the day, month, and year first herein written.

Original stamped one dollars United States internal revenue.

(Original signed) S. P. GRIFFIN.
F. J. PRATT.
EDW. S. WURZBURGER.
JONAS PICKLES.
JOHN WHARTON.
JAMES G. CLARK.
E. B. BENTON, for self.
As transferee of Wm. McKenna.
B. B. BENTON,
Agent for John Lockwood, transferee of Henry V. Barringer.
OLIVER D. RUSSELL.
R. T. PACKWOOD.
J. H. CRIPPEN.
WM. DURBRIDGE,
Successor to A. J. Oliver.

ALFRED SHAW.
FREDERICK HEEKER.

J. WILSON SHAW,
Notary Public.

I certify the above and foregoing to be a true copy of the original act extant in the records of my office.

52 Witness my hand and official seal at New Orleans this 24th day of March, 1869.

(Signed) J. WILSON SHAW,
Notary Public.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this twenty-third day of March, in the year of our Lord one thousand eight hundred and sixty-nine, before me, John Wilson Shaw, a notary public in and for the parish of Orleans, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared William D. Sawyer, attorney in fact for L. P. Sawyer, Robert Blamer, transferee of William D. Sanger, Joseph H. Pearson, Andrew J. May, transferee of William S. Mudgett and J. Viosca, all of whom are of the full age of majority, who declared and said that they are desirous of joining and concurring with the signers of a certain act passed in this office and signed on the 22d March, 1869, to wit, S. P. Griffin, F. J. Pratt, E. S. Wurzburger, and others, incorporators, or their representatives and successors, pursuant to an act of the legislature of the State of Louisiana, approved March 8th, 1869, entitled an act to protect the health of the city of New Orleans, to locate the stock,

53 landings and slaughter-houses, and to incorporate "The Crescent City Live-stock Landing and Slaughter-house Company," by which notarial act they proceed to form themselves and adopt certain articles and conditions therein named.

The said appearers declare that they adopt all and singular the declarations, terms, articles, and conditions in the aforesaid notarial act, which act they have duly examined at the execution hereof, and join in and bind themselves, their constituents, associates, and successors by all the conditions, and claim all privileges and benefits thereunder, the same as though they had signed the said original notarial act upon the date thereof.

Thus done, passed, and duly stamped in my office, at the city of New Orleans aforesaid, in the presence of Alfred Shaw and Frederick Heeker, competent witnesses, who have hereunto signed their names with the said parties and appearers and me, the said notary, on the day, month, and year first herein written.

(Original signed) W. D. SANGER,
Attorney in Fact for L. P. Sanger.
R. BLOOMER,
Transferee of Wm. D. Sanger.
J. H. PEARSON.
A. J. MAY,
Transferee of Wm. S. Mudgett.
J. VIOSEA.

54 (Original signed)
ALFRED SHAW,
FREDERICK HEEKER.

J. WILSON SHAW,
Notary Public.

A true copy of the original act extant and of record in my office.
New Orleans, La., March 26th, 1869.
(Signed) J. WILSON SHAW,
Notary Public.

Petition (marked B) offered in evidence by Mr. Mott.—Filed April 12th, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

To the honorable the judge of the sixth district court in and for the parish of Orleans, in the State of Louisiana:

The petition of the Butchers' Union Slaughter-house and Live-stock Landing Company or corporation, created under the laws of the State of Louisiana as necessary and for public utility and advantage, the domicil of which is in the city of New Orleans and State of Louisiana, and herein acting through and legally represented by Arman Trosche, president of said corporation, who by acclamation of said corporation authorizes and submits the institution of this suit, represents that the purposes and objects of said corporation as expressed in their
55 act of incorporation are to establish and erect buildings and wharves, with stables, pens, yards, sheds, and other necessary buildings to land, receive, shelter, provide for, take care of, and protect

all kinds of horses, mules, cattle, and other animals in carrying on the said Butchers' Union Slaughter-house and Live-stock Landing Company, and the slaughtering of animals intended for food in the city of New Orleans, and elsewhere; that from various circumstances of internal local improvement, extent of the city of New Orleans, in a territorial point of view, with the growth of commerce, population, and necessities resulting therefrom, with climate and other circumstances, this corporation is one of great public utility and advantage, and is entitled to be protected in the exercise and purposes and rights.

Now petitioner represents that unless enjoined and restrained the Cresent City Live-stock Landing & Slaughter-house Company, so called, located in the parish of St. Bernard, just below the United States barracks, the domicil of which company is in the city of New Orleans, will interfere with, either by suit or otherwise, and prevent their carrying on their said business and their said corporation with its purposes and objects, and for the sole purpose of maintaining illegally and by monopoly said business of slaughtering animals for food in this
56 city and vicinity. That petitioner desires it to be well understood in this petition, that the police power of city and State, legally exercised, is fully recognized as governing and controlling said business and corporation, and that, after recognizing and submitting thereto, they are entitled to protection in the exercise of their rights and business under their said corporation, but that unless restrained they will be interfered with and not allowed to exercise and carry on their said business by said Cresent City Live-stock, Landing and Slaughter-house Company, and which would cause petitioner great and incomparable injury, exceeding one thousand dollars. That the cause heretofore of said Crescent City Live-stock Landing and Slaughter-house Company, has been such in its endeavors to maintain a monopoly in the premises that the city of New Orleans has been proceeded against and even the authority of the State of Louisiana involved in reference thereto. That from these circumstances connected he also fears that the State and city may interfere with and prevent the exercise of their rights as said slaughter-house, unless restrained.

Wherefore petitioner prays for writs of injunction, directed to the City of New Orleans, through the Mayor, I. W. Patton, the Crescent City Live-stock Landing & Slaughter-house Company, through Joseph Hernandez, president thereof, and the State of Louisiana, through
57 Egan, att'y gen'l thereof. That they be also served with petition and injunction and cited as the law directs and requires, and, after due and legal proceedings, that there be judgment in petitioner's favor making injunction herein perpetual and peremptory, and restraining said defendants from in any manner interfering with petitioner in the carrying on the business and purposes of the said corporation, and for general relief in the premises.

(Signed) BELDEN & WOOLFSON,
A. A. GRANDPRE, *Att'ys.*

Before me, the undersigned, appeared Aman Troschе, who, on oath, says that he is the president of the Butchers' Union Slaughter-house and Live-stock Landing Company, and that the allegations of above and foregoing petition are true and correct.

(Signed) AMAN TROESCHER.

Sworn to and subscribed before me this 20th March, 1880.

(Signed) TH. BUISSON, *3d J. P.*

Let a writ of injunction issue, as herein prayed for, upon plaintiffs giving bond, with good and solvent security in the sum of five hundred dollars, conditioned according to law.

New Orleans, March 20th, 1880.

(Signed) W. H. RIGHTON, *Judge.*

A true copy.

(Signed) H. MIESTER, *D'y Clerk.*

58 *Judgment.—Rendered June 28th, 1880.*

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494

Fifth district court for the parish of Orleans.

In this case, the court considering the law and evidence to be in favor of defendants, it is ordered, adjudged, and decreed that there be judgment dismissing plaintiff's suit and the writ of injunction herein issued, with costs.

Judgment rendered June 28th, 1880.

Judgment signed June 29th, 1880.

(Signed) W. H. ROGERS, *Judge.*

Waiver of delays.—Filed June 29th, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans.

The plaintiff in the above-entitled cause waives the delays accorded for signing judgment and declines to apply for a new trial.

(Signed) THOS. J. SEMMES, *Att'y for Pl'ff.*

59 *Motion of appeal.—Filed June 29th, 1880.*

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 10494.

Fifth district court for the parish of Orleans.

On motion of Thomas J. Semmes and Robert Mott, attorneys of the plaintiff in the above entitled suit, and on suggesting that it has been informed and believes that there is error to its prejudice in the final judgment rendered against it therein, on the 28th day of June, 1880, and plaintiff is irreparably aggrieved thereby, it is ordered that plaintiff be allowed a suspensive appeal to the supreme court of Louisiana, holding sessions at New Orleans, returnable on the first Monday

of November next, on giving bond in the sum of one thousand dollars and according to law.

Bond of appeal.—Filed June 29th, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter house Co.
vs.
CITY OF NEW ORLEANS.
} No. 10494.

Fifth district court for the parish of Orleans.

60 Know all men by these presents that we, the Crescent City Live-stock Landing and Slaughter-house Company, as principal and A. B. Wheeler as surety, are held and firmly bound unto Thomas Duffy, clerk of the fifth district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of one thousand dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these psesents, sealed with our seals, and dated in the city of New Orleans, on this 29th day of June, in the year of our Lord one thousand eight hundred and eighty.

Whereas the above bonded Crescent City Live-stock Landing & Slaughter-house Company this day filed a motion of appeal from a final judgment rendered against it in the matter of the Crescent City Live-stock Landing & Slaughter-house Company vs. City of New Orleans, No. 10494, in the fifth district court for the parish of Orleans, on the 28th day of June, 1880, and signed on the 29th day of June, 1880:

Now, the condition of the above obligation is such that the above-bound Crescent City Live-stock Landing & Slaughter-house Company shall prosecute its appeal and shall satisfy whatever judgment may be rendered against it, or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in
61 the appeal; otherwise that the said A. B. Wheeler shall be liable in its place.

(Signed) J. HERNANDEZ, *President.* [L. S.]
A. B. WHEELER. [L. S.]

Certificate.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

I, Thomas Duffy, clerk of the fifth district court for the parish of Orleans, do hereby certify that the foregoing ninety-four (94) pages contain a full and complete transcript of all proceedings had, testimony and evidence adduced, and of all the documents filed upon the trial of the case wherein the Crescent City Live-stock Landing and Slaughter-house Company is plaintiff, and the City of New Orleans is defendant, the same being numbered No. 10494 of the docket of this honorable court.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at the city of New Orleans, on this 31st day of July, in the year of our Lord one thousand eight hundred and eighty,

and in the 105th year of the Independence of the United States of America.

(Signed) THOMAS DUFFY, *Clerk.*

62 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme court of the State of Louisiana.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co., appellant,
vs.
CITY OF NEW ORLEANS, APPELLEE. } No. 7996.

TRANSCRIPT OF APPEAL.

Filed 28th October, 1880.
(Signed) EMILE DUPRÉ,
Dy Clerk.

Order for summary docket.—Filed Nov. 2, 1880.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co.
vs.
CITY OF NEW ORLEANS. } No. 7996.

Supreme court of Louisiana.

The clerk will please place this case on the summary docket, as it is an injunction case.

(Signed) ROBERT MOTT,
T. J. SEMMES,
Att'ys for Appellant.

Cause continued.—Extract from the minutes.

THURSDAY, *February 3d*, 1881.

The court was duly opened.

63 Present, their honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co.
vs.
CITY OF NEW ORLEANS. } No. 7996.

This case was ordered by the court to be continued with preference.

Answer & prayer to amend.—Filed 19th April, 1881.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co.
vs.
CITY OF NEW ORLEANS. } No. 7996.

To the honorable supreme court of Louisiana:

Defendant and intervenor, for answer to the appeal herein, pray the

court to amend the judgment of the lower court so as to decree that the plaintiff has no exclusive privilege to keep slaughter-houses, abattoirs, or stock-landings in the parishes of Orleans, Jefferson, & St. Bernard, or houses for the slaughtering of animals intended for human food, and that plaintiff has no right to restrict such business to its property, lands, or houses, and for general relief.

(Signed) B. R. FOREMAN & C. F. BUCK,
City Att'y.

64 *Cause submitted.—Extract from the minutes.*

THURSDAY, *April 21st*, 1881.

The court was duly opened.

Present, their honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 7996.

This case was called for trial; and having heard argument from Robert Mott, and Thomas J. Semmes, of counsel for plaintiff and appellant, and from Benjamin R. Foreman and Eugene K. Washington, of counsel for the defendant and intervenors, appellees herein:

The court took said case under advisement, upon the briefs now on file for appellees, and those to be filed on behalf of the appellant on or before the 1st proximo.

Agreement.—Filed 3d May, 1881.

CRESCENT CITY LIVE-STOCK, LAND' & SLAUGHTER-house Co. *vs.* CITY OF NEW ORLEANS. } No. 7996.

65 It is agreed that the appellant have until the 5th day of May, 1881, to file the briefs, for the preparation of which ten days was allowed by the court, provided I have time to reply, if necessary.

New Orleans, May 2d, 1881.

(Signed) B. R. FOREMAN, *Att'y.*
C. F. BUCK,
City Attorney.

Opinion.—Filed May 16th, 1881.

Supreme court of the State of Louisiana.

CRESENT CITY LIVE-STOCK LANDING & Slaughter-house Co *vs.* CITY OF NEW ORLEANS. } No. 7996.

MR. JUSTICE LEVY:

Plaintiff, an incorporated company, instituted this suit in which it

prayed for a writ of injunction "restraining the City of New Orleans from entertaining any petitions for and from ever designating a place or places for the landing, yarding, sheltering, or slaughtering, any animal or animals intended for human food, in the parishes of Orleans, Jefferson, and St. Bernard, other than at the slaughter-houses and premises of petitioner, and above the United States barracks on the east or left bank of the Mississippi River, and above the depot of
66 Morgan's Louisiana and Texas Railroad on the west or right bank of said Mississippi River, and that the injunction be made perpetual, and that said city of New Orleans be condemned to pay the petitioner twelve hundred dollars damages." The injunction prayed for was granted by the lower court.

Martin Wolff intervened by petition, alleging that he was largely engaged in the slaughtering of animals, and sale of meats in the upper portion of the city of New Orleans, and is largely interested in the result of this suit; that plaintiff has no exclusive right under the law, or exclusive privilege of slaughtering animals at its yards as claimed in its petition, &c.

The City of New Orleans, in her answer, makes a general denial of all the allegations in the petition, so far as the same may have a tendency to give plaintiff any cause of action against her; alleges that the statute creating the plaintiff corporation, approved March 8th, 1869, is a public statute, and the powers therein were delegated under the general police power of the State; that plaintiff gave no bonus and paid no consideration whatever, either to the State or city for the exclusive rights, privileges, and benefits thereby conferred; that there is no contract thereby or thereunder, between plaintiff and the State; that the general assembly of 1869 could not irrevocably or for a limited time divest the State of its police power nor
67 prevent subsequent legislatures from revoking and enlarging the privileges granted; that by article 244 of the constitution of 1879 it is provided "that the constituted authorities of all incorporated municipalities of the State shall alone have the power of regulating the slaughtering of cattle and other live-stock within their respective limits, provided no monopoly or exclusive privilege shall exist in this State, nor such business be restricted to the lands or houses of any individual or incorporation, provided the ordinances designating the places for slaughtering shall obtain the approval of the board of health or other sanitary organization"; that the aforesaid article of the constitution is valid and obligatory upon all the inhabitants of this State, both individuals and bodies corporate, and amounts to a revocation of the powers granted plaintiff under the act of 1869, and repeals the monopoly or exclusive privilege created by said statute in plaintiff's favor; that in accordance with said constitutional provision, the city, through its council, was about passing an ordinance with the concurrence of the board of health, regulating the slaughtering of cattle and other live-stock within her limits, and designating the places for slaughtering, when arrested and prevented by the injunction herein issued; that no court has a right to enjoin the execution of the consti-
68 tution or any portion thereof. Respondent denies that the said provision of the constitution violates in any manner the Constitution of the United States; claims damages to the extent of one thousand dollars, and prays for the dissolution of the injunction.

There was judgment dismissing plaintiff's suit and dissolving the injunction, with costs. Plaintiff has appealed.

The intervenor, in his answer to the appeal, prays for an amendment

of the judgment, so as to decree that the plaintiff has no exclusive privilege to keep slaughter-houses, abattoirs, and stock-landings in the parishes of Orleans, Jefferson, and Saint Bernard, or houses for the slaughtering of animals intended for human food; and that plaintiff has no right to restrict such business to its property, lands or houses.

The grounds on which plaintiff relies to obtain the relief sought in this suit are the following:

1°. The grant by the State to the company by act 118 of 1869 of the exclusive right to carry on the business of live-stock landing and slaughtering in the parishes named, for a period of twenty-five years, is a valid grant, binding upon the State and the citizens of the State.

2°. The act embodied a contract between the State and the company, the obligation of which is under the safeguard of Art. , section 10 of the Constitution of the United States, which forbids a State from
69 passing any law impairing the obligation of contracts.

3°. Articles 258 and 248 of the Constitution of 1879, so far as they may be construed to abrogate the contract between the State and the company embodied in the act of 1869, cannot be sustained on the assumption that they were adopted in the exercise of the police power for the promotion of the health of the city of New Orleans and vicinity. So far as these articles may be construed to impair the obligation of the contract embodied in the act of 1869, they are held to be inoperative and void.

The defendants and the intervenor on their part contend:

That by art's 46, 248 and 258 monopolies are abolished and prohibited.

That the exclusive privileges granted to Crescent City Slaughter-house Company, by act 118, of 1869, were not within the contracting power of the legislature, but an exercise of the police power, and may be abolished at the will of the people of the State.

The controlling questions for decision are, then, does the act No. 118, of 1869, creating this corporation constitute a contract between the State and the company?

Was that act an exercise of the police power of the State; and, if so, could it legally become the subject of a contract, irrevocable during the term fixed therein?

Do the exclusive rights and privileges accorded by the act
70 create a monopoly, and, if so, are the monopoly features in the charter of the corporation abolished by article 258 of the constitution of 1879?

Are articles 248 and 258, so far as they may apply to the features in the act 118 of 1869, obnoxious to the objection that, and inoperative and void because, they violate section 10, Art. 1, of the Constitution of the United States?

Act No. 118 of 1869, is entitled "An act to protect the health of the city of New Orleans, to locate the stock-landings and slaughter-houses, and to incorporate The Crescent City Live Stock-landing and Slaughter-house Company." It embraces the following main provisions: Prohibiting the landing, keeping, or slaughtering of animals except at the landing of and by the slaughter-house company; incorporating the members of the company; defining the limits within which the landings, pens, slaughter-houses, &c., shall or may be constructed or erected; fixing the fees and charges, imposing penalties for violation of the act or interfering with the privileges granted therein; closing all other stock-landings and slaughter-houses within the parishes of Orleans, Jefferson, & St. Bernard; requiring all animals, the meat

whereof is to be for sale in the parishes Orleans and Jefferson, to be slaughtered in the slaughter-houses thus erected by the company, under the penalties prescribed; requiring the appointment
71 by the governor of the State, of an inspector clothed with police powers, to inspect all stock that is to be slaughtered, fixing the fee of the inspector, and the bond to be given by him to the State; fixing the fees for slaughtering; requiring that all fines and penalties recovered for a violation of or interference with the privileges granted the company to be paid one-half to the company or corporation, in consideration of their prosecution of violation of the act, and the other half to the auditor of public accounts to the credit of the educational fund; limiting the continuance of the privileges granted to the term of twenty-five years from the passage of the act.

The act of the legislature, the provisions of which we have just enumerated constitutes, under the legal definition of the term prima facie, a contract. Parsons in his work on Contracts vol. 1, p. 6, defines a contract as "an agreement between two or more parties for the doing or not doing of some particular thing;" (4 Wheaton, 197; 2 Blackstone Com., 416.) It must therefore be conceded that on the face of the act, the incorporation or charter of the company forms a contract; and if it is not liable to the legal obligations that the subject-matter or object contemplated was beyond the power or right of the contracting parties is entitled to the protection afforded by the Federal Constitution
72 which inhibits the impairment of contracts by any legislative or even constitutional enactment of a State.

In 23 A., 545, State ex rel. Belden, attorney-general, vs. Wm. Fagan et als., the supreme court of this State held that act No. 118 of 1869, the object of which was "to protect the health of the city of New Orleans, &c.," was "clearly within the police powers of a State." The court further said: "Does the act of 1869 cease to be a police regulation because it locates the stock-landing and slaughter-houses elsewhere, and creates a corporation as a means to carry out the legislative will? We think not. The members of the general assembly were the sole judges as to the instruments by which they should enforce their police regulations. What the State can do itself, it can do through a corporation." (11 A., 371.)

The Supreme Court of the United States passing upon this question in the "Slaughter-house cases," (16 Wallace, 36;) also held, in plain and forcible expressions, that this act was the exercise of the police power of the State, and was within the power of the legislature of Louisiana. That distinguished tribunal declared, in the case cited: "The authority of the legislature of Louisiana to pass the present statute is ample, unless some restraint in the exercise of that power be found in the constitution of that State or in the amendments to the Constitution of the United States.

73 Hence we are of opinion that, so far as the restrictions in regard to the landing and slaughtering of stock are concerned within the limits defined in the act and prevention of these beyond their limits, the State exercised the police power as she was competent to do, and the delegation of these powers, to that extent corporation was vested in her discretion and within her authority. In Stone vs. Mississippi, 101 U. S., 814, it was held (C. J. Waite being the organ of the court): "All agree that the legislature cannot bargain away the police power of a State." "Irrevocable grants of property and franchises may be made if they do not impair the supreme authorities to make laws for the right government of the State, but no legislature can

curtail the power of its successors to make such laws as they deem proper in matter of police." (34 N. Y., 657; 94 U. S., 645.) Many attempts have been made in this court and elsewhere to define the police power, but never with entire success. * * * No one denies, however, that it extends to all matters affecting the public health or the public morals. (97 U. S., 25; Idem, 501.) We think the reasoning of the court in regard to the right of the State to withdraw the privilege granted to the lottery company which was under consideration in the case of Stone vs. Mississippi is strictly applicable to the with-
74 drawal of the particular police power granted or delegated by the act No. 118 of 1869 of this State. The court said: "All that one can get by such a charter is a suspension of certain governmental rights in his favor, subject to withdrawal at will. He has, in legal effect, nothing more than a license to enjoy the privilege on the terms named for the specified time, unless it be sooner abrogated by the sovereign power of the State. It is a permit, good as against existing laws, but subject to future legislative and constitutional control or withdrawal."

In so far as the provisions of act No. 118 of 1869 conflicts with or is repugnant and in opposition to the provisions of article 248 of the constitution of 1879 such provisions are abrogated and the police power necessary to carry them out, which were delegated to the corporation or company are withdrawn, and by that article are, to the extent covered by its terms and incident thereto, conferred "on the police juries of the several parishes and the constituted authorities of all incorporated municipalities of the State." Article 248 of the constitution is as follows: "The police juries of the several parishes and the constituted authorities of all incorporated municipalities of the State shall alone have the power of regulating the slaughtering of cattle and other live-stock within their respective limits, provided no monopoly or exclusive
75 privilege shall exist in this State, nor such business be restricted to the lands or houses of any individual or corporation, provided the ordinances designating the places for slaughtering shall obtain the concurrent approval of the board of health or other sanitary organization."

We think that so far as the police regulations, touching the subject-matter of the limits within which the landing, keeping, and slaughtering of animals prescibed by the act 118 are involved, that article 248 of the constitution of 1879 do not repeal them, the selection and indication of the limits and localities are fixed by the act, they do not fall within the objections to irrevocable grant of police powers discussed above, and considered in the decisions quoted. Until amended or repealed as regards the mere limits prescribed, they continue in force and effect. The act becomes inoperative only so far as it is abrogated by the constitutional provisions mentioned. It is needless to waste words in any discussion of the question as to the existence of monopoly features in the act 118. Such features stand forth in the boldest relief. Article 258 of the present constitution addresses itself directly to them and they are deprived of force, vitality, and even existence.

Article 258 reads "All rights, actions, prosecutions, claims and
76 contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this constitution and not inconsitent therewith, shall continue as if the said constitution had not been adopted. But the monopoly features in the charter of any corporation now existing in the State, save such as may be contained in the charters of railroad companies, are hereby abolished. Holding, then, the views which we have hereinbefore expressed, and considering

that the act does not create such contract as is protected by the 10th section of Art. 1 of the Constitution of the United States, we are of opinion that the exclusive rights and privileges conferred upon and granted to the company plaintiff no longer exist, but by operation of the constitution are abolished.

It is therefore ordered, adjudged, and decreed that the judgment appealed from be affirmed with costs.

Judgment and decree.—Extract from the minutes.

MONDAY, *May 16th*, 1881.

The court was duly opened pursuant to adjournment.

Present, their honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

His honor, Justice Levy, pronounced the judgment and decree of the court in the following case:

77 CRESCENT CITY LIVE-STOCK, LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 7996.

On appeal from the fifth district court for the parish of Orleans.

It is ordered, adjudged, and decreed that the judgment appealed from be affirmed with costs.

Petition for rehearing.—Filed 23d May, 1881.

Supreme court of Louisiana.

THE CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co. *vs.* CITY OF NEW ORLEANS. } No. 7996.

We had determined to not ask a rehearing, and sue out a writ of error to remove the case into the Supreme Court of the United States. On considering, however, the case of "The Town of Lake View vs. The Rose Hill Cemetery Company" (70 Illinois R., 192), deem it our duty to ask the court to reconsider its decision.

In that case the court said:

"The act of the legislature does not profess to correct any abuses in the use of the property, but is an arbitrary prohibition of its use in accordance with the provisions of a charter previously granted. Upon what principle can such a law be maintained, or what 'overruling
78 necessity' was there for its enactment? There is no pretence the cemetery, as constructed, is a nuisance, nor is there any charge that the health or comfort of the vicinity has been or could be affected in the near or even in the distant future. If it can be maintained at all it must be by some absolute power by which the general assembly, it being the sole judge of the extent of its powers, may declare what shall and what shall not be, independently of all constitutional restrictions. Reference is made *is made* to the reserved power

of the State, denominated 'police power,' as affording the requisite authority. It has been said the source of this extraordinary power may be readily recognized as flowing from the people in their organized capacity, inalienable in its character, but that it is difficult to define its boundaries or limit its operations. We are unwilling, however, to concede the existence of an indefinable power, superior to the constitution, that may be invoked whenever the legislature may deem the public exigency may require it, by which a party may be capriciously deprived of his property or its use without compensation, whether such property consists of franchises or tangible forms of property.

"Under the power to regulate, the State cannot deprive the citizen of the lawful use of his property if it does not injuriously affect or endanger others.

"In the case at bar, by the provisions of its charter, the com-
79 pany was authorized to buy and hold land not exceeding a certain quantity, and to use it for cemetery purposes. This it can rightfully do; and while the State has the unquestionable power to regulate the manner of its use, so far as it may injuriously affect others, it cannot, under the pretence of making police regulations, repeal its charter and revoke its franchises, or deprive the company of any of the essential rights conferred by its charter.

"As a general proposition, it may be stated, it is the province of the law-making power to determine when the exigency exists calling into exercise this power. What are the subjects of its exercise is clearly a judicial question. There must be necessarily constitutional limitations upon this power. It is essential that such regulations must have reference to the comfort, safety, or welfare of society, and when applied to corporations they must not be in conflict with any of the provisions of the charter. It is not lawful, under the pretence of police regulations, to take from a corporation any essential rights and privileges conferred by its charter. (Potter's Dwarris on Statutes, 458; Cooley on Const. Lim., 577.) The right to control is essentially different, and rests on different principles from the power to repeal, alter, or amend charters of private corporations.

This case is supported by others, to which we beg leave to refer.

"New Orleans vs. St. Louis Church, 16 A., 245."

80 "The other cases cited by plaintiff's counsel are cases of the abatement of flagrant nuisances, proved to be such by acts of the municipal authorities, very often summarily, but justified by the police power vested in those authorities for the protection of the public health, and the safety of life and property."

Pres. Church vs. City of N. Y., 5 Cowan, 512.

We insist that the State had a right to contract with us at the time the contract was made; that we were a necessity to the public; that without we have become an injury to the health, morals, or property of the people, the State cannot take away our rights; that the question is a judicial one, and our contract is protected by the Constitution of the United States.

The testimony shows that we have been a great public benefit, and are located where all modern sanitary opinion requires all slaughter-houses to be, viz, outside of the city limits.

Respectfully submitted,

(Signed) MOTT & KELLY,
For Plaintiff & Appellant.

Rehearing refused.—Extract from the minutes.

MONDAY, *30th May*, 1881.

The court was duly opened pursuant to adjournment.

81 Present, their honors Edward Bermudez, chief justice, Felix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

His honor the chief justice pronounced the judgment and decree of the court in the following case:

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co.,
vs.
CITY OF NEW ORLEANS. } No. 7996.

It is ordered that the rehearing applied for in this case be refused.

Writ of error.—Filed May 30th, 1881.

Supreme court of the State of Louisiana.

THE CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co., plaintiff in error,
vs.
THE CITY OF NEW ORLEANS, MARTIN WOLFF intervenor, defendant in error. } No. 7996.

Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana at New Orleans, La., in pursuance of the statute in such cases made and provided this 30th day of May, one thousand eight hundred and eighty-one.

(Signed) ROBERT MOTT,
Attorney of Plaintiff in error.

82 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said between the Crescent City Live-stock Landing and Slaughter-house Company plaintiff, the City of New Orleans, defendant, and Martin Wolf intervenor, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption, specially set up or claimed under such clause of the said Constitution treaty,

83 statute, or commission, a manifest error hath happened, to the great damage of the said Cresent City Live-stock Landing and Slaughter-house Company, as by its complaint appears: We being that error, if any thath been, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 30th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

84 *Bond for writ of error.—Filed 30th May*, 1881.

Supreme court of Louisiana.

CRESCENT CITY LIVE-STOCK LANDING & Slaughter-house Co.
vs.
CITY OF NEW ORLEANS. } No. 7996.

Know all men by these presents that we, The Crescent City Live-stock Landing and Slaughter-house Company, as principal, and Bertrand Saloy and Joseph Hernandez, as surities, are held and firmly bound unto the City of New Orleans and Martin Wolf, intervenor, in the full sum of two thousand five hundred dollars, to be paid to the said city of New Orleans and the said Martin Wolf, certain attorney, executors, administrators, successors, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this thirtieth day of May, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at a supreme court of the State of Louisiana, holding sessions at New Orleans, in a suit depending in said supreme court, wherein the Crescent City Live-stock Landing and Slaughter-house Company was plaintiff and the City of New Orleans defendant,
85 and Martin Wolf intervenor, judgment was rendered against the said Crescent City Live-stock Landing and Slaughter-house Company, the plaintiff, and the said Crescent City Live-stock Landing and Slaughter-house Company having a writ of error, and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of New Orleans and the said Martin Wolf, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Crescent Live-stock Landing and Slaughter-house Company shall pros-

ecute its writ to effect, and answer all damages and cost' if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

The Crescent City Live-stock Landing and Slaughter-house Company.

(Signed) By J. HERNANDEZ, *President.*
" B. SALOY. [L. S.]
" J. HERNANDEZ. [L. S.]

Sealed and delivered in the presence of—
(Signed) ROBERT MOTT.

NEW ORLEANS, *May 30th*, 1881.

Bond approved.

E. BERMUDEZ,
Chief Justice..

86 *Certificate of the clerk.*

UNITED STATES OF AMERICA:

Supreme court of the State of Louisiana.

I, George W. Dupré, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing eighty-five pages contain a full and complete copy of the transcript of the proceedings had in the fifth district court for the parish of Orleans, in a certain suit wherein the Crescent City Live-stock Landing and Slaughter-house Company was plaintiff and the City of New Orleans was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said Crescent City Live-stock Landing & Slaughter-house Company, which appeal is now on the files thereof under No 7996.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 30th day June, anno Domini 1881, and in the 105th year of the Independence of the United States of America.

[SEAL.] GEORGE W. DUPRÉ, *Clerk.*

87 *Certificate of the judge.*

UNITED STATES OF AMERICA:

Supreme court of the State of Louisiana.

I, Edward Bermudez, chief justice of the supreme court of the State of Louisiana, do hereby certify that George W. Dupré is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of George W. Dupré to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 30th day of June, anno Domini 1881, and in the 105th year of the Independence of the United States of America.

[SEAL.] E. BERMUDEZ,
Chief Justice of the Supreme Court of the State of Louisiana.

88 THE UNITED STATES OF AMERICA:

Supreme court of the State of Louisiana.

The President of the United States, to the City of New Orleans, defendant, and to Martin Wolf, intervenor, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein the Crescent City Live-stock Landing and Slaughter-house Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Crescent City Live-stock Landing and Slaughter-house Company as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States this 30th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

E. BERMUDEZ,
Chief Justice Supreme Court of the State of Louisiana.

89 (Indorsed:) Supreme court of the State of Louisiana. No. 7996. The Crescent City Live-stock Landing & Slaughter-house Company, pl'ff's in error, vs. The City of New Orleans, Martin Wolf, intervenor, defendants in error. Citation to the defendants in error. Filed 10 June, 1881. T. Mc. C. Hyman, d'y clerk.

Marshal's return.

Received May 31, 1881, by the U. S. marshal, and I served true copies of the within citation of error on the parties herein named in the following manner and date, to wit:

City of New Orleans, def'd't in error, by handing the same to Joseph A. Shakspear in person, the mayor of the aforesaid city, at his office in the city-hall of said city on June 4th, 1881; Martin Wolf, def'd't in error, by handing the same to him in person in the city of New Orleans, June 6th, 1881.

E. S. CURRY,
D'y U. S. Marshal for Eastern District of Louisiana.

Personally appeared before me, E. S. Curry, a deputy United States marshal in and for the eastern district of Louisiana, and makes oath that he served true copies of the within citation of error on the def'd'ts in error herein named as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal in & for Eastern District of La.

Subscribed and sworn before me June 6, 1881.

T. V. COUPLAND,
Commissioner United States Circuit Court
Eastern District Louisiana.

90 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you, or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit between the Crescent City Live-stock Landing and Slaughter-house Company, plaintiff, the City of New Orleans, defendant, and Martin Wolf, intervenor, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity or wherin was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution,
91 or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Crescent City Live-stock Landing and Slaughter-house Company as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of Octoday next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 20th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL..] F. A. WOOLFLEY,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—

(Indorsed:) Supreme Court of the State of Louisiana. No. 7996. The Crescent City Live-stock Landing & Slaughter-house Company, pl'ff in error, versus The City of New Orleans, Martin Wolf, intervenor, defendants in error. Writ of error. Filed May 30, 1881. T. McC. Hyman, d'y clerk.

(Indorsement on cover:) No. 870. The Crescent City Live-stock Landing and Slaughter-house Company, plaintiff in error, vs. The City of New Orleans and Martin Wolf, intervenor. Louisiana supreme court. Filed 26 July, 1881.

In the Supreme Court of the United States.

OCTOBER TERM, 1881.

No. 870.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE CO., PLAINTIFFS IN ERROR,

versus

THE CITY OF NEW ORLEANS.

E. L. Hansell, Stationer and Printer, 30 Camp St., New Orleans.

In the Supreme Court of the United States.

OCTOBER TERM, 1881.

No. 870.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER-HOUSE CO., PLAINTIFFS IN ERROR,

versus

THE CITY OF NEW ORLEANS.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of the Crescent City Live Stock Landing and Slaughter-House Company, a body corporate under the laws of Louisiana, and plaintiff in error herein, respectfully shows to your Honors:

1. That it appears on the face of the transcript of appeal herein, that this suit originated by the filing by your petitioners on the 5th of February, 188 , in the late Fifth District Court of the parish of Orleans, of which the present Civil District Court for the parish of Orleans is the successor, of a petition wherein it was averred in substance, in so far as it is material to set forth the substance of said averments here, that the plaintiff company was incorporated by Act of the Legislature of Louisiana, No. 118 of 1869; that by its charter it was required to build and maintain slaughter-houses, yards, pens, sheds, etc., and to provide at least one slaughter-house of the capacity for slaughtering five hundred *per diem*, all of which to be located below the United States Barracks, on the east bank of the Mississippi River, and below the depot of the Opelousas and Great Western, now Morgan's Louisiana and Texas Railroad, on the west bank of the river; that the company was also required to prosecute all violations of the provisions of the statute by which the charter of

the company was granted, and to cause to be enforced the prohibitory clauses thereof; in consideration of all of which, the company was granted the exclusive privilege of having and maintaining slaughter-houses, stock landings, yards, sheds, etc., for the landing, sheltering and slaughtering of all animals intended for human food in the parishes of Orleans, Jefferson and St. Bernard, and to have certain fees and perquisites for and from all animals so slaughtered, the said exclusive rights and privileges to continue for a term of twenty-five years from the date of the passage of the act, March 8th, 1869; that in consequence of said charter, and the contract with the company therein contained, the company purchased the necessary grounds and constructed the requisite buildings, landings, etc., for carrying out the purposes of the act of the Legislature, at an outlay of over half a million of dollars, and that the capital stock of said company became of great value, and was invested in by many persons.

That by said act all persons and corporations are forbidden from landing, keeping or slaughtering any cattle, sheep, swine or other animals at any point on the west bank of the Mississippi River above the depot of Morgan's Louisiana and Texas Railroad, or within the corporate limits of the City of New Orleans, on the east bank, above the United States Barracks; and that the exclusive right and privilege of carrying on said business of live stock landing and slaughtering within the said designated limits are vested by said act in the said company; and that the validity of said exclusive privileges so held by said company has been recognized alike by the Supreme Courts of the State and of the United States.

That lately certain persons, representing themselves to be butchers, have petitioned the City Council to grant them the privilege of slaughtering animals in the parish of Orleans, at other places than the slaughter-houses of the company, in derogation of the company's exclusive rights and privileges as aforesaid, pretending that the present Constitution of the State has abrogated the aforesaid exclusive rights and privileges of the company, and that the City Council has the right to designate a locality or localities within the limits of the city, within which

slaughter-houses may be constructed and maintained, and the business of live stock landing and slaughtering may be carried on by parties other than the said company; and that the City Council has entertained the proposition of said petitioning butchers, and is about to designate a place or places for landing and slaughtering animals intended for human food, in the parishes of Orleans, Jefferson and St. Bernard, other than the landings and slaughter-houses of the company, and at places above the United States Barracks, on the east bank of the Mississippi River, and above Morgan's Railroad Depot on the west bank: whereas, petitioner charges that the provisions of the Constitution of the State of Louisiana, of 1879, which, it is pretended, have abrogated the exclusive rights and privileges, as aforesaid, of said company, granted by the State of Louisiana to the company by the contract aforesaid between the company and the State, embodied in said Act No. 118, of 1869, and upon the faith of which the company has expended, as aforesaid, over a half a million of dollars, are, in so far as they were intended, or are susceptible of being construed, to abrogate the exclusive rights and privileges granted, as aforesaid, to said company, null and void, for repugnancy to the tenth section of the first article of the Constitution of the United States, which forbids a State to pass any law impairing the obligation of contracts.

And the said petition prayed for an injunction restraining the City and the City Council from designating any place or places, other than the landings, yards and buildings of the company, as places where the business of live stock landing and the slaughtering of animals intended for human food, in the parishes of Orleans, Jefferson and St. Bernard, might be carried on.

2. That the court, considering the averments of the petition, verified on oath, and on petitioner's giving bond with sufficient surety, conditioned as the law directs, in an amount determined by the court as sufficient to secure the defendant in injunction against all loss or damage in case it should be finally held that the writ improperly issued, granted the injunction as prayed for, "restraining the City of New Orleans from entertaining any petitions for, and from ever designating any place or places for the landing, yarding, sheltering or slaughtering any animal or

animals intended for human food, other than at the slaughter-houses and premises of petitioner, and above the United States Barracks, on the east of left bank of the Mississippi River and above the depot of Morgan's Louisiana and Texas Railroad, on the west or right bank of said Mississippi River."

The injunction was granted on the 5th of February, 1880, the day of the filing of the petition, affidavit and bond.

3. The City of New Orleans in her answer, filed March 3d, 1880, makes a general denial of all the allegations in the petition, in so far as the same may have a tendency to give plaintiffs any cause of action against her; alleges that the statute creating the plaintiff corporation, approved March 8th, 1869, is a public statute, and that the powers therein were delegated under the general police power of the State; that the plaintiff gave no *bonus* and paid no consideration whatever either to the State or the city for the exclusive rights, privileges and benefits thereby conferred; that there is no contract thereby or thereunder between the plaintiff and the State; that the General Assembly of 1869, could not irrevocably or for a limited time, divest the State of its police power, or prevent subsequent Legislatures from revoking the privileges granted; that by article 248 of the Constitution of 1879, it is provided "that the constituted authorities of all incorporated municipalities of the State, shall, alone, have the power of regulating the slaughtering of cattle and other live stock within their respective limits; *provided*, no monopoly or exclusive privilege shall exist in this State, nor such business be restricted to the land or houses of any individual or corporation; *provided*, the ordinances designating the places for slaughtering shall obtain the concurrent approval of the Board of Health or other sanitary organization;" that the said article of the Constitution is obligatory upon all the inhabitants of this State, both individuals and bodies corporate, and amounts to a revocation of the powers granted plaintiff under the act of 1869, and repeals the monopoly or exclusive privilege created by said statute in plaintiff's favor; that, in accordance with said constitutional provision, the city, through its Council, was about passing an ordinance, with the concurrence of the Board of Health, regulating the slaughtering of cattle and other live stock within her limits,

and designating the places for slaughtering, when arrested and prevented by the injunction herein issued. That no court has the right to enjoin the execution of the Constitution or any portion thereof, and respondent denies that said provision of the Constitution violates in any manner the Constitution of the United States; claims damages to the extent of one thousand dollars, and prays for the dissolution of the injunction.

4. Your petitioner represents that the case was tried in the District Court on the pleadings, as set forth above, and that judgment was rendered therein on the 28th and signed on the 29th of June, 1881, dissolving the injunction and dismissing the suit; and that on the same day, and within the delay allowed by law, your petitioner took a suspensive appeal from said judgment to the Supreme Court of Louisiana, and that the said court, on the 16th of May, 1881, affirmed the said judgment; and that, thereafter, and within the delay allowed by law, your petitioner applied to the said court for a rehearing of said case, which application was refused by said court on the 30th of May, 1881.

5. Your petitioner represents that the decision of the Supreme Court of Louisiana being adverse to the claim of your petitioner that the rights and privileges conferred by the State of Louisiana upon petitioner by the contract between them, set forth and embodied as aforesaid in said Act No. 118, of 1869, was under the protection and safeguard of the tenth section of the first article of the Constitution of the United States, which forbids a State from passing any law impairing the obligation of contracts, and that the articles of the Constitution of the State of Louisiana of 1879 relied upon by the defendant as operative and effective to abrogate said contract without the consent of your petitioner, are, in so far as they were intended, or are susceptible of, being construed to abrogate said contract or take away the exclusive rights and privileges therein and thereby granted as aforesaid, were null and void, for repugnancy to said section ten of article one of the Constitution of the United States, your petitioner, on the day that the application for a rehearing was refused, to wit, on the 30th of May, 1881, and within the delay allowed by law, lodged in the office of the clerk of the said Supreme Court a writ of error, in due form of law, to the Supreme

Court of the United States, and on the same day gave a proper bond to operate as a *supersedeas* of said judgment of said court, which bond was, on the same day, approved and accepted by the Chief Justice of said court, and that your petitioner took all other proper steps to suspend the operation of and supersede said judgment until the said claim of right so as aforesaid made by your petitioner under the Constitution of the United States, and so as aforesaid adversely determined against your petitioner by said State courts, should be heard and determined by the Supreme Court of the United States.

6. Your petitioner represents that under the law and settled jurisprudence of the State of Louisiana, the said injunction so as aforesaid granted to your petitioner by the said Fifth District Court of the parish of Orleans, on the 5th of February, 1880, "restraining the City of New Orleans from entertaining any petitions for, and from ever designating a place or places for the landing, yarding, sheltering or slaughtering any animal or animals intended for human food, in the parishes of Orleans, Jefferson and St. Bernard, other than at the slaughter-houses and premises of petitioner, and above the United States Barracks, on the east of left bank of the Mississippi River, and above the depot of Morgan's Louisiana and Texas Railroad, on the west, or right bank of said Mississippi River," remains in full force and effect against the defendants in injunction, until such time as the said injunction shall be dissolved by judgment of court, and such judgment shall become final and executory. Your petitioner represents that before the said judgment of said District Court, dissolving said injunction and dismissing the suit, became final and executory, it was suspended and superseded by a suspensive appeal therefrom, taken in the manner and at the time herein before set forth, and that the effect of such appeal was to maintain said suit in court, and to maintain said injunction as fully in force and effect as it had been before said judgment was pronounced.

And your petitioner represents that before the said judgment of the Supreme Court of Louisiana, affirming, as aforesaid, said judgment of said District Court became final, executory and operative to dissolve said injunction, the said judgment of

said Supreme Court was suspended and superseded by the writ of error to the Supreme Court of the United States, and the said *supersedeas* bond so as aforesaid lodged and filed by your petitioner in the office of the clerk of the Supreme Court of Louisiana.

And your petitioner says that, by reason of the premises, the said injunction is now and has been at all times from the granting thereof, on the 5th of February, 1880, until now, in full force and effect against the City of New Orleans and the Mayor and Administrators thereof, individually and collectively.

7. Your petitioner represents that, under the law and jurisprudence of Louisiana, one effect of said suspensive appeal, so as aforesaid taken by your petitioner from the said judgment of the said late Fifth District Court, was to divest the said court, and its successor, the present Civil District Court of the Parish of Orleans, of all jurisdiction over said suit, pending said appeal, for any purpose whatever, except to inquire into the sufficiency of the surety on the appeal bond.

And respondent further says, that the effect of said writ of error and *supersedeas* bond, so as aforesaid lodged and filed by your petitioner in the office of the Clerk of the Supreme Court of Louisiana, was to divest said court of all jurisdiction and control over said suit, for any purpose, until the Supreme Court of the United States shall finally determine said suit upon said writ of error, and shall send down its mandate therein to the Supreme Court of Louisiana.

8. Your petitioner further represents that the case now being properly before this court on writ of error, it has the right to issue any writ or order which may be necessary to render its appellate jurisdiction effectual, and to maintain the matters involved in this suit in the condition in which they were immediately prior to the suing out of the writ of error and *supersedeas*, until the final determination by this court of the claim of right in the premises, so as aforesaid set up by petitioner under the Constitution of the United States, and so, as aforesaid, adversely determined against your petitioner by the aforesaid State courts of Louisiana.

9. Your petitioner further represents that notwithstanding the fact that the injunction aforesaid, so as aforesaid granted to

your petitioner on the 5th of February, 1880, is still in full force and effect, and has been continuously in force and effect from the day of its issuance until now, the said City of New Orleans, by its Mayor and Administrators, did in breach and contempt of said injunction, on the 19th of July, 1881, pass a certain ordinance, No. 7239, Administration Series, which was duly promulgated in the official paper of the City of New Orleans on the 20th of July, 1881, in the words and figures following, to wit:

MAYORALTY OF NEW ORLEANS,
City Hall, July 20, 1881.

[No. 7239—Administration Series.]

AN ORDINANCE designating the places for slaughtering animals intended for food in the Parish of Orleans, under article 248 of the constitution.

SECTION 1. *Be it ordained by the Common Council of the City of New Orleans*, That it shall be lawful for any person or corporation to erect, keep and maintain slaughter-houses, live stock landings and pens, and abattoirs within the following limits: The lower line of the Parish of Orleans, Poland street, Third district, the Mississippi river and the lake in the rear; and the Algiers side of the Parish of Orleans, beginning at the lower line of Jefferson Parish, to the lower line of the Parish: provided the consent in writing shall be obtained of the owner of any dwelling-house, actually inhabited as a residence, within one hundred feet of the proposed location of any slaughter-house or abattoir before such slaughter-house or abattoir shall be built.

SEC. 2. That all slaughter-houses, abattoirs, live stock landings and pens, or other places for keeping, preserving or slaughtering animals intended for food in the Parish of Orleans, shall be provided with adequate steam pumps and water pipes, and an abundant supply of water, cold and warm, for flushing and washing, daily, and keeping clean and healthy, such places, with large closed pipes leading into the Mississippi river, below low water mark, amply sufficient for carrying off into deep water all the blood, offal, washings, filth and water used in washing and cleansing such places daily, and such places shall be subject to such further sanitary rule and regulations as may be hereafter prescribed by the municipal authorities.

SEC. 3. Any person who shall slaughter any cow, bull, steer, beef, calf, sheep, hog, goat, kid or other animal, within the Parish of Orleans, above or outside of the limits designated in section first of this ordinance, or outside of slaughter-houses or abattoirs provided with the cleansing apparatus required in section second, shall be fined, on conviction before any recorder or police magistrate, not more than one hundred dollars, and imprisoned not more than ten days.

SEC. 4. The first section of this ordinance shall take effect on receiving the concurrent approval of the State Board of Health or other sanitary association.

SEC. 5. All laws, ordinances and regulations inconsistent with this ordinance are repealed.

SEC. 6. That for the better carrying out of the purposes of this ordinance, and for the purpose of protecting the consumers of meat, the Council shall, upon the recommendation of the mayor, elect or appoint one inspector, whose duty shall be to inspect all animals before and after being killed for food, under this ordinance.

Adopted by the Council of the City of New Orleans, July 19, 1881.

Yeas—Delamore, Fagan, Guillotte, Huger, Mealey, Walshe.
Absent—Fitzpatrick.

JOS. A. SHAKSPEARE, Mayor.

A true copy:

M. MCNAMARA, Secretary.

CERTIFICATE.

I certify the foregoing to be a true copy of Ordinance No. 7239, as adopted by the Council of the City of New Orleans, July 19th, 1881, and duly promulgated in the official journal.

Council Chamber, New Orleans, November 16, 1881.

M. MCNAMARA, Secretary.

Which ordinance, as appears from the official promulgation thereof, was adopted by the votes of William E. Huger, who is, and was at the time of the adoption of said ordinance, Administrator of Accounts of said city and a member of the Council of said city; of Blaney T. Walshe, who is, and was at the time of

the adoption of said ordinance, Administrator of Finance of said city and member of the Council thereof; of J. V. Guillotte, Administrator of Waterworks and Public Buildings of said city, and a member of the Council thereof; of P. Mealey, Administrator of Police of said city, and a member of the Council thereof; of William Fagan, Administrator of Commerce of said city, and a member of the Council thereof; and of George Delamore, Administrator of Assessments of said city, and a member of the Council thereof, the said above named Administrators, with John Fitzpatrick, Administrator of Improvements of said city, who was absent at the time of the adoption of said ordinance, constituting the City Council of New Orleans, presided over by the Mayor, Joseph A. Shakspeare, who approved and signed said ordinance, a duly certified copy of which is herewith filed

And your petitioner further represents that afterwards, to wit, on the 13th of September, 1881, the said City Council, in breach and contempt of said injunction, adopted an ordinance, No. 7336, Administration Series, in the words and figures following, to-wit:

MAYORALTY OF NEW ORLEANS,
City Hall, September, 13, 1881.

[No. 7336—Administration Series.]

AN ORDINANCE, designating the places for slaughtering animals intended for food in the Parish of Orleans, under Art. 248, of the constitution.

SECTION 1. *Be it ordained by the Common Council of the City of New Orleans*, That it shall be lawful for any person or corporation, to erect, keep and maintain slaughter houses, abattoirs, live stock landings and pens within the following limits: The lower line of Poland street, the Mississippi river and Goodchildren street, on the left or east bank of the river, and below the Depot of Morgan's Texas Railroad on the right bank of the river.

SEC. 2. That all slaughter-houses, abattoirs, live stock landings and pens, or other places keeping, preserving or slaughtering animals intended for food in the parish of Orleans, shall be provided with adequate steam pumps and water pipes, and an abundant supply of water, cold and warm, for flushing and daily washing, and keeping clean and healthy such places, with large

closed pipes leading into the river below low water mark, amply sufficient for carrying off into deep water all the washings and water used in washing and flushing, and shall, moreover, be provided with a nuisance boat or barge or barges, constructed in a manner similar to the one now in use by the city and vidangeurs, amply sufficient to hold and contain and carry off daily all offal, filth and waste of such slaughter-houses or abattoirs. And no such offal or filth shall be emptied into the river within the limits of the parish of Orleans, but the same shall be daily emptied into a nuisance boat or barges and daily towed and emptied in the middle of the river below the line of the parish of Orleans. Such places shall be subject to such farther sanitary regulations as may hereafter be prescribed by the municipal authorities.

SEC. 3. Any person who shall slaughter any cow, bull, steer, beef, calf, sheep, lamb, hog, goat, kid or other animal within the parish of Orleans above or outside of the limits designated in section first of this ordinance, or outside of slaughter-houses or abattoirs provided with the cleansing apparatus, and boats or barges required in section second, or who shall fail to tow away or empty daily all the offal and filth in the middle of the river below the parish of Orleans, shall be fined on conviction before any recorder or police magistrate, not more than twenty-five dollars and imprisoned not more than thirty days, or both at the discretion of the recorder.

SEC. 4. The first section of this ordinance shall be submitted to the concurrent approval of the Board of Health or other sanitary organization.

SEC. 5. All laws, ordinances or other regulations inconsistent with this ordinance are repealed.

SEC. 6. The Mayor shall appoint, with the advice and consent of the Common Council, one or more veterinary surgeons, or other persons skilled in knowledge of the diseases of cattle, inspectors of cattle, whose duty it shall be to inspect all animals intended for food before and after being killed, and who shall have power to destroy and have thrown into the nuisance boat any diseased or unhealthy meat unfit for food. The said inspector shall receive as his compensation a fee of (5) five cents for each and every head of stock to be inspected, the said fee to be

paid to the said inspector by the owner or possessor of said stock slaughtered.

Adopted by the Council of the City of New Orleans, September 13, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Walshe.

Absent—Mealey.

JOS A. SHAKSPEARE, Mayor.

A true copy:

W. JOHN MCCALL, Ass't Sec'y.

I certify the foregoing to be a true copy of Ordinance No. 7336, A. S., adopted by the Council of the City of New Orleans, September 13, 1881, and duly promulgated in the official journal.

M. MCNAMARA, Secretary.

Council Chamber, New Orleans November 16, 1881.

Which ordinance was promulgated in the official paper of the city of New Orleans on the day of its adoption, September 13, 1881, and was adopted by the votes of Administrators Delamore, Fagan, Fitzpatrick, Guillotte, Huger and Walshe Administrator Mealey being absent at the time of its adoption and not voting; and which ordinance was approved and signed by the said Mayor, Joseph A. Shakspeare, a duly certified copy of which is herewith filed

Wherefore, your petitioner prays that the said Joseph A. Shakspeare, Mayor, the said Blaney T. Walshe, Administrator of Finance, the said William E. Huger, Administrator of Accounts; the said John Fitzpatrick, Administrator of Improvements; the said George Delamore, Administrator of Assessments; the said P. Mealey, Administrator of Police; the said William Fagan, Administrator of Commerce, and the said J. V. Guillotte, Administrator of Waterworks and Public Buildings, constituting the Mayor and City Council of the City of New Orleans, may be held individually and collectively to answer for said breaches and contempts of said injunction, and that justice may be done in the premises

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1881.

No. 870.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER-HOUSE COMPANY, PLAINTIFFS IN ERROR,

versus

THE CITY OF NEW ORLEANS.

To Joseph A. Shakspeare, Mayor; Blaney T. Walshe, Administrator of Finance; William E. Huger, Administrator of Accounts; George Delamore, Administrator of Assessments; John Fitzpatrick, Administrator of Improvements; P. Mealey, Administrator of Commerce, and J. V. Guillotte, Administrator of Waterworks and Public Buildings, individually and collectively, as constituting the Mayor and City Council of the City of New Orleans:

Take notice, that the Court will be moved on behalf of plaintiff in error, at Washington, District of Columbia, on Monday, December 19th, 1881, or as soon thereafter as counsel can be heard, that you stand committed, individually and collectively, as constituting the Mayor and City Council of the City of New Orleans, for breach of the injunction herein, as set forth in the petition and affidavit, copies of which is herewith served upon you.

Supreme Court of the United States.

OCTOBER TERM, 1881.

No. 870.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTERHOUSE COMPANY

versus

THE CITY OF NEW ORLEANS.

Now comes Joseph A. Shakspeare, Mayor of the City of New Orleans; Blaney T. Walshe, Administrator of Finance; William E. Huger, Administrator of Accounts; George Delamore, Administrator of Assessments; John Fitzpatrick, Administrator of Improvements; Patrick Mealey, Administrator of Commerce, and J. V. Guillotte, Administrator of Waterworks and Public Buildings, collectively constituting the Mayor and City Council of the City of New Orleans, and for answer to the petition herein filed—to hold these respondents for contempt of an injunction issued by the late Fifth District Court for the Parish of Orleans—respectfully show the Court:

1. That the matters and things set up in the petition are no cause of punishment, nor is any contempt alleged of the authority or jurisdiction of this Honorable Court.

2. These respondents expressly deny that they have ever committed or intended to commit any contempt of the authority of this Honorable Court.

3. And further answering, they say that the act of the Legislature of the State of Louisiana, No. 118 of 1869, on which plaintiffs rely, so far as it has any application to the case, was an exercise of the police power of the State and not the subject of contract, as settled by this Honorable Court in "THE SLAUGHTERHOUSE CASES," 16 Wallace, 36.

Boyd vs. Alabama, 94 U. S. 845.

Beer Co. vs. Massachusetts, 97 U. S. 25.

Stone vs. Mississippi, 101 U. S. 814.

That the people of Louisiana, on 2nd December, 1879, adopted and ratified a Constitution, which contained the following provisions and articles :

Article 46. "The General Assembly shall not pass any local or special law on the following specified objects : * * * Granting to any corporation, association or individual any exclusive right, privilege or immunity."

Then lest it be said this applied only to future grants :

Article 248. "The police juries of the several parishes and the constituted authorities of all incorporated municipalities of the State, shall alone have the power of regulating the slaughtering of cattle and other live stock within their respective limits ; provided no monopoly or exclusive privilege shall exist in this State, nor such business be restricted to the land or houses of any indi-

vidual or corporation; provided the ordinances designating places for slaughtering shall obtain the concurrent approval of the Board of Health or other sanitary organization."

Article 258. "* * * The monopoly features in the charter of any corporation now existing in the State, save such as may be contained in the charters of railroad companies, are hereby abolished."

That said Articles of the Constitution of the State are in no wise or manner repugnant to any provision of the Constitution of the United States.

That your respondents are informed and believe that their predecessors in office, the late Mayor and Common Council of the City of New Orleans, were about to exercise the legislative power conferred on them by Article 248 of the State Constitution aforesaid, when ex parte and improvidently the plaintiffs in the present case obtained from the late Fifth District Court for the Parish of Orleans an injunction enjoining and restraining the City Council from passing any ordinance, designating the places where slaughterhouses might be located in the parish and City of New Orleans. That plaintiffs keep their slaughterhouse in an adjoining parish out of the jurisdiction of respondents, and the City Council have never at any time attempted to exercise any control over them. That the said late Fifth District Court for the Parish of Orleans, in 1880, by a final decree dissolved the injunction so improvidently issued. That the plaintiffs appealed to

the Supreme Court of Louisiana, which Court affirmed the judgment of the said late Fifth District Court for the Parish of Orleans, and the legal effect of said decree of the Supreme Court of Louisiana was to finally dissolve the said injunction and to leave no injunction in existence.

That your respondents were advised by counsel learned in the law that the allowance of a writ of error from this Honorable Court did not revive or reinstate the injunction which had been dissolved. That this Honorable Court had decided in Doyle vs. Wisconsin, 94 U. S. 50, that Section 1007, Revised Statutes of the United States has no application to the decrees and judgments of the Supreme Courts of the States, but only has reference to the judgments of the Courts of the United States; and in the Slaughterhouse Cases, 10 Wallace, 274, a writ of error and supersedeas did not affect an injunction *maintained* by the State Supreme Court.

Respondents were further advised, that an appeal from a decree in the Circuit Court of the United States dissolving an injunction does not reinstate or revive an injunction granted in limine, but dissolved on final hearing and by final decree; and Section 1003, Revised Statutes, enacts that "writs of error from the Supreme Court to a State Court, shall have the same effect as if the judgment or decree complained of had been rendered or passed in a Court of the United States."

Respondents were advised that they had the legal right to exercise the legislative power granted to them by the

Constitution of the State of Louisiana, and the Courts cannot interfere by injunction to restrain the exercise of a legislative power.

Wherefore respondents pray the petition be dismissed and the motion denied.

CHAS. F. BUCK,
B. R. FORMAN,
of Counsel.

Joseph A. Shakspeare, Blaney T. Walshe, William E. Huger, George Delamore, John Fitzpatrick, Patrick Mealey and J. V. Guillotte, being each severally sworn, say the allegations of the foregoing answer are true.

Sworn to and subscribed before me this 14 day of December, 1881.

Signed - Jas Fahey not Pub -

Jos A Shakespeare
mayor
J V. Guillotte
adm. W W & B.
Wm Fagan
adm. commerce
W E Huger
adm. Pub acets
Patrick Mealey
adm. Police
B T Walshe
adm of finance
John Fitzpatrick
adm improvements

Geo. Delamore -
adm of streets & lamps

A true Copy
New Orleans Dec 14 1881 -

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 269.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER-HOUSE COMPANY,
PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS, AND MARTIN WOLF,
INTERVENOR.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 269.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER-HOUSE COMPANY,
PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS, AND MARTIN WOLF,
INTERVENOR.

Now comes "The City of New Orleans," and Martin Wolf, intervenor, defendants in error, through B. R. Forman, their counsel, and moves the Court to rescind the order dismissing this case on 22d January, 1884, and to reinstate the case that it may be called, tried and determined by this honorable Court.

1. Because said order dismissing the cause was made *ex parte* and without the consent of defendants in error, and without notice to them, and is in conflict with the ruling of this Court made on a similar motion in the case of McGuire vs. The Commonwealth, 3 Wallace 382.

2. Because the question raised in this case is of great public importance, and involves the supply of animal food to 300,000 people, and the State Courts and the United States Court for the Eastern District of Louisiana, are in opposition on this question, the State Courts permitting and sanctioning the establishment of competitive slaughter-houses, which the

Federal Court enjoins and prohibits. The motion to discontinue the writ of error, in this case, was made to avoid an adverse decision of this Court on the monopoly claimed by plaintiffs in error, the said plaintiff relying upon the Circuit of the United States in Louisiana to protect and perpetuate, by successive injunctions, its illegal monopoly in the food supply to the great city of New Orleans.

The defendants in error in this case, and the appellants in the case of "The Butchers' Union Slaughter-House and Live Stock Landing Company vs. The Crescent City Live Stock Landing and Slaughter-House Company, No. 627, unite in the motion to reinstate the first named case, and also move to advance the last named cause, and move that it be heard and determined at the same time as the first cause. 1. Because the question involved is the same, and the parties are virtually the same. The sole question in both cases being—Has the Crescent City Live Stock Landing and Slaughter-House Company (plaintiff in error in the first cause and appellee in the second cause), by virtue of the Act 118 of 1869, Louisiana Legislature, a CONTRACT RIGHT to the monopoly or exclusive privilege to keep and carry on slaughter-houses, protected against subsequent State legislation by the clause in the Federal Constitution forbidding any State to pass a law impairing the obligation of a contract?"

In other words, was the Act 118 of 1869, of the State Legislature a *contract*, as to the monopoly and exclusive privilege, within the meaning of article 1, §10 of the Federal Constitution.

STATEMENT OF THESE CASES.

On 8th March, 1869, the Legislature of Louisiana passed Act 118, of that year, printed in full in the record of the case of The Crescent City Slaughter-House Company vs. The City of New Orleans, No. 269, pages 15 to 19. The first section makes it unlawful for any one, except the "Crescent City Slaughter-House Company," to land, keep or slaughter any animal, or establish yards, pens, abattoires or a slaughter-house within the three parishes of Orleans, Jefferson and St. Bernard, under a penalty of $250 for each offence. The other sections incorporate the company named, and imposes upon it certain duties and confers upon it certain powers. The first section is the only one material to this cause.

This statute was vigorously attacked by most eminent counsel, as being in derogation of the Fourteenth Amendment of the Federal Constitution, and the statute was sustained by the State Supreme Court, in State ex rel. Belden vs. Fagan, 23 Louisiana Annual Reports, page 545, and this honorable Court in "The Slaughter-house cases," 16 Wallace, 36, upheld this statute, as a valid exercise of the POLICE POWER OF THE STATE.

This Crescent City Slaughter-House Company has had the exclusive privilege and monopoly, of slaughtering animals in the three parishes, covering about 1080 square miles, 691,200 acres of territory, and having, in 1880, a population of 232,661, now nearly 300,000 people every winter.

In 1879, the people of Louisiana adopted a new Constitution, by which they: 1. Abolished all monopolies and exclusive privileges, except those granted to railway companies.

2. They took away from the Legislature the *police power* of regulating slaughter houses and designating the location of such business, and conferred this power upon the local muni-

cipal authorities of the cities, towns, parishes, etc., and the people further provided that these municipal authorities (town councils and the like), should not, in the exercise of this police power, grant any exclusive privileges or monopoly, nor restrict the carrying on of a slaughter-house to the lands of any individual or corporation." In other words, 1. The State Legislature was prohibited from legislating on the subject of slaughter houses. 2. The cities or town councils were given the exclusive power to legislate on the subject, but whatever regulations, laws or ordinances they passed, they were commanded to leave the door open to competition.

These provisions of the State Constitution are contained in articles 248 and 258, of which the following is the language:

Article 248. "The police juries of the several parishes and the constituted authorities of all incorporated municipalities of the State shall alone have the power of regulating the slaughtering of cattle and other live stock within their respective limits; provided no monopoly or exclusive privilege shall exist in this State, nor such business be restricted to the land or houses of any individual or corporation; provided, the ordinance designating the places for slaughtering, shall receive the concurrent approval of the board of health or other sanitary organization."

Article 258. "All rights, actions, prosecutions, claims and contracts, as well as of individuals, or of bodies corporate, and all laws in force at the time of the adoption of this Constitution and not inconsistent therewith, shall continue as if the said Constitution had not been adopted. But the monopoly features in the charter of any corporation now existing in this State, save such as may be contained in the charters of railroad companies, are hereby abolished."

After this Constitution went into effect the butchers of New Orleans petitioned the City Council to exercise the power del-

egated by article 248, and to designate the places where competitive slaughter houses might be built.

Thereupon, the plaintiff in error, the Crescent City Slaughter-House Company filed its petition for an injunction in the *State Court*, claiming that article 118, 1869, its act of incorporation, was a contract which gave it a contract right to an exclusive monopoly to slaughter animals for twenty-five years and the articles of the State Constitution impaired the obligative of that contract, and so violated section 10, article 1, of the Federal Constitution.

The State Supreme Court in May, 1881, decided adversely to them, and set aside and dissolved their preliminary injunction: See Crescent City Slaughter-House Co. vs. New Orleans, Martin Wolf, intervenor, pages 29-33. From this decree a writ of error was prosecuted to this honorable Court, and this is the first case which we move to reinstate, upon the authority of McGuire vs. Commonwealth, 3 Wallace 382, in order that the question of great public importance, may be speedily determined by this high tribunal. The motion made to discontinue having been made *ex parte* and without the consent or knowledge of defendants in error, and in order to avoid the danger of an adverse decision.

As soon as the State Supreme Court rendered its decree denying the continued existence of the monopoly and dissolving the injunction, originally issued by the State District Court of original jurisdiction, the City Council of the city of New Orleans passed an ordinance, designating the places where competitive slaughter houses might be built, and adopting proper sanitary regulations, which received the concurrent approval of the State Board of Health. Then an association of butchers, called the Butchers' Union Slaughter-

House Company, commenced to erect and establish a slaughter house, pursuant to the city ordinance. Thereupon the Crescent City Slaughter-House Company filed a bill in the United States Circuit Court, for an injunction, claiming that articles 248 and 258 of the State Constitution, and the city ordinances passed thereunder were void—as to them, because the Act 118, 1869, which gave them a monopoly, was a contract the obligation of which is impaired by the State, and the Circuit Court of the United States in Louisiana so held, and rendered a decree for a perpetual injunction, from which an appeal is prosecuted to this Court, in the second named cause.

It thus appears that the State Supreme Court of Louisiana and the United States Circuit Court in Louisiana are at variance on this important public question.

The State Supreme Court decides that the monopoly clauses of act 118, 1869, are effectually repealed, and any one may build and carry on a slaughter house pursuant to the ordinances of the city council of New Orleans; and as soon as any citizen or company proceed to do so the United States Circuit Court proceeds to enjoin them. It is meet and proper that this unseemly conflict should be ended, and this important public question be decided, in accordance with the principles laid down by this Court in

Boyd vs. Alabama, 94 U. S. 645.
Fertilizing Co. vs. Hyde Park, 97 U. S. 659.
Beer Co. vs. Massachusetts, 97 U. S. 25.
Stone vs. Mississippi, 101 U. S. 814.

It is not right and proper that the Crescent City Slaughter-House Company should keep their injunction from the United States Circuit Court in force, and perpetuate its illegal and oppressive monopoly for six years and evade a decision of this Court by discontinuing its writ of error, when the case

is about to be called for trial, after defendants have entered appearance and object to a discontinuance and desire a decision. Under similar circumstances, when plaintiff in error feared an adverse decision, this Court refused to allow him to discontinue and dismiss his writ of error in the McGuire case, 3 Wallace, already cited.

Respectfully submitted.

R. T. Merrick
M. T. Morris

B. R. FORMAN,

of Counsel.